CABLE TELEVISION REGULATION

HEARINGS
BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
CABLE TELEVISION REGULATION

JANUARY 18 AND FEBRUARY 16, 1982

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CABLE TELEVISION REGULATION

JANUARY 18, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Seattle, Wash.

The committee met in the south auditorium, Federal Building, Seattle, Wash., at 9 a.m., Hon. Bob Packwood (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order.

I'm pleased to be here with Senator Gorton to take up the issue of cable television. I might say it's one of the more volatile issues that we considered at the time that S. 898, the Senate telecommunications bill was passed prior to the recent consent degree on A.T. & T. It was clear during the debate in committee and during lengthy hearings in previous sessions of Congress, that this is not an uncontroversial issue. Cable television is certainly on the cutting edge of the technology that exists today, although having been on the Commerce Committee for a number of years involving communication all of that time, I think that in my wildest imagination I could not and cannot imagine where we may be 5, 10, or 15 years from now. I know that 5 years ago people said to me that no more than 5 years from now most of us would be able to buy a funny looking little dish from Radio Shack and put it on our roof, probably for not more than $200 or $300, and pick up 10 or 20 or 30 or 50 television signals, I would have said possibly in my lifetime but certainly not in my adulthood at least. We're there and so in trying to fashion laws for communication I realize that they may not be relevant for more than 4 or 5 years. They may be out of date. I don't think we'll ever again see a time when we can pass a Federal Communication Act and have it be as the present act has been, the basic communication law for close to 50 years. We're simply moving too fast for that.

I have read all of the testimony of the witnesses that have submitted their testimony prior to the hearing and I would ask in your statements that you abbreviate them as much as possible and not read them in total. All of the statements will be in the record and we will keep the record open for other statements to be inserted by those who would like to do so.

I know both Senator Gorton and I would like to ask questions and therefore to that extent if you could keep your statements brief and give us a chance I would appreciate it.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. First, I would like to say how delighted I am that we have Senator Packwood with us this morning. As most of the people representing the press, radio, and television know, the bulk of the congressional field hearings involve only one member, usually the local member of the committee. Senator Packwood is the chairman of the Senate Commerce Committee and he is vitally interested in any solution to this and to other problems involving the jurisdiction of that committee. His willingness to come to Seattle and to be part of this hearing is very significant. This is the first hearing on this subject. There will be another in Washington, D.C., perhaps one or two others outside of Washington, D.C.

Witnesses who are here today can get the first crack at talking to the members about this most important issue. Senator Packwood pointed out how rapidly technology is changing the communications world and pointed out the fact that we may simply be dealing with a temporary solution to a problem in which the technology moves much more rapidly than the ability of the law to keep up with it. Nevertheless the kind of issues with which we are dealing in communications are fundamental to the transmission of knowledge and information, and questions of competition versus monopoly are involved, and questions of local government control versus State and Federal control are involved, and questions of governmental income are very clearly involved, and questions most importantly of the way in which an individual citizen receives information and the choice that they will have in the television medium are fairly clearly involved in these hearings and will deal with the results of these hearings. So with that, again expressing my welcome to Senator Packwood and my thanks for his allowing us to have this meeting here in Seattle, I believe Mr. Chairman, that we are ready for our first panel.

The CHAIRMAN. The first panel, if you will all come up together; the Honorable Paul Sanders, Frank Grief, James Hirshfield, the Honorable Rose Besserman, and M. Graeber Jordan. We'll take the testimony in that order and after all the panel members testify—we'll have them testify and then we will ask questions.

Mr. Sanders, would you start?

STATEMENTS OF PAUL SANDERS, CHAIRMAN, LABOR AND COMMERCE COMMITTEE, WASHINGTON STATE HOUSE OF REPRESENTATIVES; FRANK V. GREIF, DIRECTOR, MAYOR'S OFFICE OF CABLE COMMUNICATIONS, CITY OF SEATTLE; JAMES HIRSHFIELD, PRESIDENT, SUMMIT COMMUNICATIONS; ROSE BESSERMAN, COUNCIL MEMBER, VANCOUVER CITY COUNCIL, ASSOCIATION OF WASHINGTON CITIES; AND M. GRAEBER JORDAN, CHAIRMAN, CABLE TELEVISION COMMISSION, CITY OF ISSAQUAH

Mr. SANDERS. Yes; I appreciate the opportunity of being able to testify before you today.

I am recommending passage of Federal legislation prohibiting State and local governments from owning or operating cable TV systems. The cable TV industry has matured rapidly to the point where they are able to provide service for approximately 50 percent of the population in the United States. The industry is still growing.

At all levels of government, local, State, and Federal, we should allow and encourage the private sector to provide services and goods which they are capable of providing to the people of this country. Government should provide only those services which cannot be provided by the private sector.

Already in this State of Washington we have had at least one terrible example of what this country is not, and I underline that word not, all about and I mean the private free enterprise system.

The city of Issaquah, 15 miles east of Seattle, threatened publicly in 1980 to confiscate private cable TV systems. Some other residents complained to the city about less than satisfactory service from the TV cable company. The city's response was to take over the system. The city went so far as to obtain a State attorney general's opinion to determine if the city had the authority. The attorney general, it might have been you, Slade, said, "Yes." As a result of this incident of local government wanting to confiscate a private cable system, I introduced house bill 705 in the last regular session of the Washington State Legislature, which prohibit local government from taking over a private cable TV system.

The house local government committee approved the measure and when the local government committee in the State of Washington approves taking away a right of local government, that's kind of a first.

An overwhelming majority of the house members and about two-thirds of the senators agreed that this was a misuse of local government power and passed House bill 705; in the house there were 83 positive votes, 12 negative votes, and 3 not voting. In the senate the vote was 35 ayes and 18 nays and 1 abstention. Unfortunately our newly elected Governor vetoed the bill and I assume that it was because he was still wearing his local government hat and not that as a Governor of the State of Washington. However, the legislative representatives of the people had spoken.

It appears to me that while you are considering whether or not the Federal Government should pass new regulations regarding cable TV, Congress should take this opportunity to include in the law a prohibition against local government owning or operating local cable TV.

That concludes my testimony.

The **Chairman**. Representative Sanders, thank you.

Mr. Greif?

Mr. **Greif**. Thank you. I am Frank Greif, director of the mayor's office of cable communications for the city of Seattle. I also serve as the national chairman of the National Association of Telecommunications Officers and Advisors, a new professional association of local elected and appointed officials dealing with the regulation and development of cable communications.

First permit me to welcome the Senators and the staff to Seattle on behalf of Mayor Charles Royer. Unfortunately the mayor is not able to attend this morning. He's asked me to pass along his welcome and his greetings and the mayor has also asked me to submit for the record some remarks on the issue of cable regulation and congressional action, those remarks made as chairman of the Cable Television Task Force of the National League of Cities.

You have received my written remarks and I would like to, with the committee's permission, leave those as they are and address a very specific development that I think has significant impact on local cable regulation; that is the recent Supreme Court decision in the *Boulder* case, a decision that was handed down on Wednesday.

As you know the city of Boulder was sued by a cable television company for antitrust violation. The company had been granted a franchise in Boulder and had constructed only a small part of the city. The city had said to the company, "you must begin development of your system in the city." The company did not, and the city passed a moratorium stating that the cable company could not build any more so that new bids could be received from various companies.

At that point the case was joined with the company suing the city.

I am not an attorney but I have spent a fair amount of time the last 3 days speaking with attorneys, both in Washington, D.C., and here, to sort out what this exactly means for the cities. Of course the answer is not clear but I think in rough form it can be said that the decision states that cities cannot displace competition with regulation unless granted authority to do so by the State.

The questions are many but some of the specific ones are: What standards will the cities be held to and how specific must the State granted authority be, and what, after all, is reasonable regulation? There are no clear answers.

All we know for sure is that if found guilty the cities are liable for treble damages.

Well, what do we do now, those of us who are in the job of regulating the industry? Nobody seems to know.

There will be a big, new law specialty, I suppose, as antitrust counsel for the cities.

The Seattle situation is not unlike a lot of others. We have a request for proposals on the street right now. It would appear at first blush that I have two options. One is to go ahead and accept all of the bids on February 1 as scheduled, then grant the franchise in the spring and hope that by then we will have a fair answer.

What happens if we give it to one of five companies, say, that bid and the other four sue us and therefore put the city in jeopardy of treble damages four times over? The other option is to put everything on hold, but I am told we cannot because refusing to grant a franchise could in fact be seen as a violation of antitrust laws.

We're kind of damned if we do and damned if we don't. The big question I think is, who really suffers from all of this? I will submit that it is the public, the public that is clamoring for service and the public that is demanding that the government do something. If we just open the floodgates, that is, grant franchises to anyone who walks into city hall, who will get service in our community? Will we in fact have companies wiring only the silk stocking districts of our city? Will we see electronic red lining; people in one section of the city getting better service than other sections? After all we have no clear guaranty of head-to-head competition. In only 6 out of the almost

10,000 communities in our country that are served by cable is there head-to-head cable competition.

When cities do take that route they raise the possibility of serious consequences.

Let me briefly review a portion of a letter I received from my counterpart in the city of Phoenix where the city decided to grant franchises to almost anyone that comes in the door. I will read:

> Since I returned to Phoenix cable has been filling 24 hours of my day. The one cable licensee with a limited area of the city of Phoenix requested an extension which would increase its area by five times. One licensee is now proceeding to increase his 20 percent ownership by a national firm to 50 percent. Three people laid down in front of a trencher and we sent four police officers to assist the cable licensee. We held a join neighborhood meeting with one licensee and had to request police protection to assure safe exits. One licensee notified the city his deadline for activation will not be met and a lawsuit involving two licensees, one power company and a telephone company, has been scheduled for November 2. A trailer broke loose from a licensee's truck and ran through the wall of a home. One licensee worked 24 hours a day for 3 days to meet the pole attachment deadline and I interviewed for a job in another city.

That's not the typical case, that's one we would see as the worst case scenario. The point is we have a need for local control. Cities now more than ever need help from Congress. We need a clearly stated policy which gives local governments the tools to insure good and reasonable service for our citizens. The citizen has a right to standards of performance. The only way we can insure that right is to have flexible measures, including rate control, access provisions and serious compliance provisions. This is all part of a franchise agreement.

We also need that very important option of doing the job ourselves and that is municipal ownership.

I will conclude by saying the Boulder decision has on one hand clouded the picture but on the other hand has clearly shown the need for prompt congressional action giving local government the tools needed to fulfill our responsibilities.

Thank you.

[The statements follow:]

STATEMENT OF FRANK GREIF, DIRECTOR, OFFICE OF CABLE COMMUNICATIONS, CITY OF SEATTLE

Good morning. I am Frank Greif, Director of the Mayor's Office of Cable Communications for the City of Seattle. I also serve as the National Chairman of the National Association of Telecommunications Officers and Advisors, a professional association of local elected and appointed officials dealing with the regulation and development of cable communications.

Permit me to welcome the members and staff of the Committee to Seattle. Unfortunately, Mayor Charles Royer is not able to attend this morning's session, but he has asked me to pass along his welcome and his greeting.

Before addressing my specific points this morning, permit me to give some background. My beliefs on the way in which cable television should or should not be regulated come from experience as a local regulator . . . the local government representative to whom the citizen turns when that citizen has reached a point of frustration. The current debate over regulation, deregulation,, or reregulation many times focuses on the "what if" or on speculation of what things will be like when we have wired the nation. My approach this morning will, I hope, come from the more practical side of today's reality. That reality clearly shows that the vast majority of cable television systems have fewer than 20 channels and that despite the talk of 52 and 100 channel systems, they do not exist. I would submit the approach of Congress to regulation of cable must address the excitement of the future, but must do so tempered by the reality of today.

When you clear away all of the rhetorical clamor and legal citations that swirl through cable television regulatory debate, there are two basic questions that come through loud and clear. They are:

Why should local government regulate cable?

What is cable television?

The questions may sound simple enough, but in the answers are found that the stuff of heated debate, endless litigation, and, I believe, sound public policy.

In response to the first question, "Why should local governments regulate cable?" it can be stated that such regulation is simply the traditional exercise of basic governmental responsibility. Local government sets the terms and conditions for the use of public rights-of-way by commercial interests. In order to assure that the terms and conditions are met the local government retains certain regulatory powers. How those powers are shaped and used depends on the commercial interest using the public's property.

In this case the commercial interest is cable television. In order to develop rational local regulatory policy and further answer the question of why do local governments regulate cable, we must address the second basic question: What *is* this electronic modern day Merlin?

Is cable television the entertainment medium of tomorrow? Or is it the information connection which will unite our communities and our nation? Or is cable simply an enhanced version of something we already know about, the television system? And what kind of industry is this? Is it a national industry or a local industry?

The industry says it has a definition: Cable is an electronic newspaper which faces stiff competition and should therefore be given full first amendment protection and left alone to do as it will. We should not be surprised to hear such a definition from the industry for when viewed in such a manner cable would be exempt from almost any effort by local or federal government to protect the public's best interest.

Is cable a national industry? I would submit to the Committee that it is not. In fact, the cable industry is a series of discreet coaxial systems serving individual communities or community clusters. In almost each case the system is separate and different from others owned by a parent company. They may share some programming and financial transactions, but the design and operation is local in nature. Therefore, cable is a local electronic delivery system serving various segments of the public.

And what about the public? How does the average citizen define cable? To the average citizen, cable television is the excitement and choice we have all been promised since television first blinked upon American society. Cable is the one service that provides pay TV, a wide range of channels, and a multitude of choices bundled into one convenient package.

However, many times the citizen interested in cable faces a very big problem. There is only one cable on his or her street and the citizen must do business with the company owning that particular cable or not enjoy the service at all. To the citizen there is no question about cable's definition. It is a monopoly. Cable is a monopoly because, in fact, the citizen has no choice if he or she is to enjoy this unique service. We have heard discussion of cable overbuild in which the citizen would have a choice, but in fact, in only about 10 out of the approximately 10,000 communities served is there side-by-side competition. Subscription television and MDS offer limited opportunities to the citizens and, of course, there is free TV. But only one system wraps it all together and delivers everything to the consumer's door. That one system is cable and it is a de facto monopoly.

The suggestion has been made that a municipality might grant multiple franchises and end the monopoly. There are several questions raised by such a possibility. First, how does the city make sure that all of the city is wired and not just the silk stocking areas? Perhaps the franchise would have to state that all companies must be willing to wire every section of the city, both aerial and underground. Given the high cost of construction, how many companies would be willing to expend the money necessary for such head-to-head competition throughout a community? How would the fight over pole space be resolved if you have four companies wanting to attach to the same pole? Until the question of head-to-head cable competition has been resolved and the system somehow changed, arguments over exclusive and non-exclusive franchises will have no impact on the monopolistic nature of cable. The citizen is faced with only one cable company to choose from and is, in fact, dealing with a monopoly.

As mentioned earlier, the industry has taken the posture that cable is an electronic newspaper and thus should enjoy the same First Amendment protection as a print publisher. I believe such a position is a bit self-serving, one that ignores the realities of the marketplace, and one that seriously denigrates the First Amendment rights of the public. Aside from suggesting the set-aside of access channels which would be open to everyone, cities are not asking for censorship over what is to be carried on cable channels. I do not believe content control would be proper. But, should access to the very system itself—the one communications link that does all—be totally controlled by the economic desires of the cable owner? That is a significant policy question.

In regulating telephone companies the federal government has seen fit to categorize them as common carriers which must make their facilities available to all potential users on a non-discriminatory basis. Should cable be declared a common carrier? The industry pales at the thought. But after all, aren't we talking about the one electronic pipeline to the home that can deliver a wide range of services? The public good requires that there be a reasonable diversity in those services. Just because the cable operator enjoys an economic monopoly does not mean he is entitled to a monopoly on the First Amendment.

The current franchise requirements for community access channels are not a form of content control. They are not an infringement of the First Amendment rights of the cable operators. The Supreme Court has said in many important cases that it is the right of the listener or viewer that is paramount, that that along with the First Amendment guarantee of free speech is a guarantee that we all have an opportunity to hear the broadest possible spectrum of speakers. Local access requirements simply preserve that public right.

If the industry continues to call for an end to access requirements, perhaps the only alternative is declaration of common carrier status for cable. But those events will unfold in the future. For those of us dealing with citizens who hear the media hype about cable and want to become part of the electronic eighties today, the problem is real. If the citizen can't get the cable company to respond, who does that citizen call? His or her local government.

And how does that local government get the company to respond to the citizen? Through local regulation. It might be best to reflect on from whence regulation comes. First is a total failure within the marketplace. Second is the perceived need by citizens for someone (most often government) to help a monopolistic and vital industry behave responsibly in the public interest. For those of us involved in answering the daily citizen complaints and questions about the cable monopoly, regulation is the one tool that is effective in protecting the citizen's interest. One of the most important regulatory tools is rate control.

As the industry promises new systems with hundreds of channels and several programming tiers, the issues of regulating "basic rates" becomes a little clouded. What is a "basic rate" when free universal service is to be provided? It's an interesting question, and the kind of question the industry loves to toss out when talking about rate regulation. But there is a very significant factor that cannot be overlooked. When discussing rate regulation, we should not just look to new systems that will be constructed in the next year or two, but to the systems now in operation.

The majority of the cable television systems in this country have a capacity of 12 channels or less. What happens if a community has one of these older systems and the citizens want more channels and better service? The cable operator may well say "no" to an upgrade. There can be many reasons for the negative reaction, but perhaps the cable operator is making so much money off one city's system he is using it to build a newer system in another community. The industry calls the smaller community a "cash cow".

It is proper for the industry to use limited funds from one community to sustain the cash flow as another city is constructed. But shouldn't at least a little of that money taken out of your own be put back into the local system to answer the needs of your citizens? It is rate control that permits local government to make sure its citizens are served.

Let me give you an example. In Seattle's master cable ordinance the section on rate control states that when an operator asks for a rate increase he must clearly show:

"* * * What proceeds derived from the system were devoted to the operation and maintenance of the system and construction of capital plant in the cable district."

In other words, if you want a rate increase, show us what you have done to improve service and build your cable plant. To be blunt, rate regulation gives us leverage. We can say to the cable company, "Here is what we want done with the old system. Is it economically feasible?" If he says no, then those figures at rate increase time had better show why it's not.

Unfortunately, the cable industry has a bit of negative history to overcome. There are many cities and towns across the country who wonder if today's franchise and refranchise promises are going to fade away as did the promises of the 60's and 70's. The franchise promises and proposals of today are fantastic, but what do we know about delivery? What happens if the special "add on" services don't do well? Will the franchise promises be broken?

In the newer franchises special regulatory inducements to fulfilling promises are being included. There are fines for each day the construction deadline is missed, or the term of the franchise is shortened for a set period any time there is a violation of the franchise. These are all effective tools, but they deal with the future. What about the systems of today?

If a city's cable franchise is more than three years old, chances are rate control is the only leverage tool available. We cannot afford to have that tool removed from the hands of local government.

After you cut through all the rhetoric, what we are really talking about is promise and performance. The industry wants to satisfy its customers. That is what it must do in order to make a profit. Local government should not prevent the industry from making its profits. But the Committee must understand that it is to local government that the customer turns when he or she is frustrated because "that monopoly, the cable company" won't respond.

Local regulation of cable television is in fact now the rule rather than the exception. In the vast majority of the cases, local governments are using that minimal local power wisely. The industry continues to flourish despite its claims that local regulation hampers growth. If local government is to continue to respond to the needs and desires of its citizens, local government needs the tools to carry out its obligations in serving all of the citizenry.

Thank you.

STATEMENT OF CHARLES ROYER, MAYOR OF SEATTLE, WASH., ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

I am Charles Royer, Mayor of Seattle and first vice president of the National League of Cities (NLC), which represents 15,000 cities of all sizes through direct membership and membership in 48 affiliated State municipal leagues. Speaking as chairman of NLC's task force on telecommunications and cable television, I would like to offer some recommendations for consideration by the Senate Committee on Commerce, Science, and Transportation in its examination of cable.

As the primary regulators of cable, city officials are uniquely aware of the tremendous potential of cable as a multifunctional local communications system and the special problems cities are encountering with this rapidly growing medium. We are grateful that the committee has chosen to begin its examination of cable in Seattle. Today I am going to address the public policy issues raised by the development of cable as a medium and to make preliminary recommendations on the major issues that Federal cable legislation should cover.

NLC's task force on telecommunication and cable television met at the Congress of Cities in early December of 1981 and instructed NLC staff to develop affirmative cable legislation. The cable industry's aggressive assertion of its interests in both Congress and the courts has made such action necessary to insure a more balanced debate of the important issues involved. We believe that the position advocated by the cable industry fails to take into account either the public interest or the legitimate concerns of State and local government. In addition to the economic interests of the cable industry, the public has first amendment rights to receive informtion from a variety of speakers (see attached report entitled Regulating Cable Television)[1] and States and local governments have rights under the police power (which are protected by the tenth amendment) to set terms and conditions for the use of the public rights-of-way.

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[1] The attachment has been retained in the committee files.

While we recognize that the cable industry's economic concerns are legitimate, we believe that a regulatory framework can be developed that protects the public interest and the rights of States and local governments as well as the profits of the cable industry. At this time, we are reluctant to make absolute statements on the specific details of cable legislation. The cable industry is undergoing a rapid transition—moving from low capacity systems which retransmit local television signals to high capacity systems which provide a wide range of video programming and one- and two-way telecommunications services.

I. BACKGROUND

A consistent and comprehensive basic regulatory framework is necessary to insure that the development of cable is orderly and that the public interest is protected. The existing regulatory framework is neither consistent nor comprehensive since it is primarily the result of historical accident.

The courts have narrowly construed the authority of the Federal Communications Commission (FCC) to regulate cable. Historically, cable has evolved from a facility designed to improve the reception of over-the-air television signals to what is becoming a communications medium with the capacity to provide a wide variety of one- and two-way communications services. As a result of this beginning as a broadcast-related technology, the FCC has treated cable as ancillary to broadcasting rather than as a common carrier and the courts have defined the FCC's regulatory authority over cable under the broadcast (title III) rather than the common carrier (title II) title of the Communications Act of 1934.

A. Federal regulation

The Federal role in the regulation of cable is almost exclusively broadcasting related: "Must carry" rules specifying which local television signals a cable system must retransmit, nonduplication of certain television signals, cable casting rules (equal access, fairness doctrine, etc.), sports blackout rules, and cross-ownership proscriptions on certain broadcast company interests. In addition, the FCC prohibits telephone companies from owning most cable systems and imposes a ceiling on the franchise fees that franchising authorities may charge.

B. State and local regulation

Although some States regulate cable, most States rely on local governments to perform all non-Federal regulation under their franchising and licensing powers. To provide cable service, a cable operator must obtain a license, permit, or easement (usually from the city, but occasionally from the State) to use the public rights-of-way for stringing its cables on poles or laying them in underground ducts. Under basic police powers, cities have the power to impose strict conditions on those who use the public rights-of-way for business purposes.

C. Overview of the cable industry

The need for local regulation is based on several factors: (1) a cable operator almost always controls a monopoly distribution facility; (2) the probability that cable will become an essential service; and (3) the vertical integration and concentration of ownership in the cable industry is growing.

1. The cable operator's local monopoly.—A cable operator is almost always the only provider of cable service in a given geographic area. In only eight of more than 6,000 cable systems in operation or under construction in the United States does one operator compete head-to-head with another for the same subscribers. Thus once a cable operator has a franchise or license, he almost always has de factor monopoly rights to use the public rights-of-way to provide cable service.

2. Cable capacity to provide essential services.—The need for strong local regulation of cable will increase if cable becomes an essential service, as is likely in the future. Cable, with its capacity to provide a multiplicity of different telecommunications services, is likely to be treated as an essential service. If telephone service, which simply provides two-way switched voice service, is considered an essential service, then clearly cable, which will provide a broader range of telecommunications services through a single distribution facility, will provide an equally, if not more, vital service.

3. The growth in vertical integration and concentration of ownership.—Both vertical and horizontal concentration of ownership in the cable industry are increasing and are expected to increase further if the FCC accepts its staff's recommendations to relax the crossownership restrictions. By 1980, 68 percent of all cable subscribers (up from 46.7 percent in 1970) were served by the largest 25 cable system operators. The impact of this concentrated ownership on the marketplace, largely a result of the acquisitions of individual cable systems by large multiple system operators (MSO's), is increased by the movement of the MSO's towards vertical integration, giving them additional power over the content of programs, the prices paid by cable operators for the programs, and access of competing programmers to their systems. In 1979 four pay cable programmer/packagers accounted for approximately 85 percent of the pay cable subscribers and each was owned by or affiliated with cable operators. No system owned by a pay programmer had an affiliation with any programmer other than its corporate relative.

On November 17, 1981, the FCC released a staff report entitled "FCC Policy on Cable Ownership" (FCC staff report) which recommended that broadcast and network crossownership rules should be rescinded and that no limitation should be imposed on multiple system ownership or the number of subscribers that may be served by an MSO. However, the FCC staff report also recommended the retention of the telephone company-cable ownership limitation because of cable's potential to become an alternative to the local telephone distribution system and the possibility of cross-subsidization of cable with telephone revenues.

After receiving comments from interested parties and the public, the FCC is expected to issue a proposed rule that will incorporate the FCC staff report's recommendations. If that rule becomes effective, the networks will be able to own and operate cable systems and offer pay programming and other cable services such as videotext. Network (and broadcasters) entry into cable will clearly accelerate the existing trend towards concentrated ownership and vertical integration.

D. Goals of local regulation of cable

Franchising authorities (primaily local govenments) have attempted to fulfill several basic responsibilities in their regulation of cable. They have attempted, with varying degrees of success, to devise regulatory tools and contractual arrangements that insure access to the cable system for residents in all areas of the community, that guarantee state of the art technology and regular system upgrades, that permit oversight of the services offered, that provide access to the system for public, educational, and governmental purposes and for third party lessees, that insure reasonable rates for basic cable service, and that allow for franchise revocation, the assessment of penalties, and refusal to renew franchises for noncompliance with terms of the franchise or equivalent.

II. JUSTIFICATION FOR FEDERAL LEGISLATION

Comprehensive cable legislation does not appear to be an immediate necessity. Congress has the time to review the existing regulatory framework and consider carefully the ramifications of any change in the framework. NLC would have preferred that Congress not intervene in an activity which is more readily dealt with at the State and local level. However, the Communications Act of 1934 is not adequate to deal with cable and representatives of the cable industry have launched an attack on State and local regulation of cable in the courts and State legislatures. Therefore, we are prepared to offer our recommendations for comprehensive cable legislation.

At this time, State and local governments would urge congressional action for three major reasons: (1) The inadequacies of existing Federal law (the Communications Act of 1934); (2) The rapid growth in vertical integration and concentration of ownership in the cable industry; and (3) Court challenges to State and local authority.

A. Inadequacies of existing Federal law

The Communications Act of 1934 regulates providers of telecommunications service according to whether they are broadcasters or common carriers. At this point in its development, cable cannot be readily categorized as either a broadcaster or common carrier. Compounding this inherent flaw of the Communications

Act has been the FCC's simultaneous reliance on the broadcast title to regulate cable, and its attempt to impose common carrier type requirements—e.g., minimum access standards on cable operators. The Supreme Court, in *FCC* v. *Midwest Video Corp.* (Midwest Video II), 440 U.S. 689 (1979), voided the FCC's access requirements because the FCC's statutory authority under the broadcasting title of the Communications Act of 1934 did not include the right to impose common carrier obligations. Since the Midwest Video II ruling, most franchise agreements have included specific access requirements. However, many of the agreements which predate Midwest Video II do not include access requirements as Federal regulations apparently obviated the need for local access requirements. Access programming cannot be required by the franchising authority under these pre-Midwest Video II agreements until the agreements are renegotiated.

By contrast, in *National Regulatory Utility Commission* v. *FCC* (NARUC II), 533 F.2d 601 (D.C. Cir. 1976), it was held that State public utility commissions have the authority to regulate the rates for the transmission of data via cable. In this case, the Federal courts have recognized the common carrier nature of certain cable services. However, the authority of the States to regulate these rates is not based on the Communications Act but rather on the States' powers to regulate common carriers.

The Communications Act's failure to address hybrid media such as cable has resulted in devolution of responsibility for regulating cable to States and local governments. We are somewhat concerned that the extent of that State and local power is not always explicit, particularly since cable is a rapidly evolving medium, providing a multiplicity of new telecommunications services. Continual litigation and uncertainty of regulatory authority does not establish a good climate for the orderly development of cable.

B. Growth in vertical integration and concentration of ownership

The FCC's staff report recommending that networks and broadcasters be allowed to own and operate cable systems raises serious questions. One of the purposes of local regulation of cable is to insure that locally oriented services and programming are available. The existing cable industry—increasingly dominated by MSO's and vertically integrated companies—is nationally rather than locally oriented, making the task of protecting local communications interests increasingly difficult. Elimination of the broadcaster and network crossownership restrictions will clearly accelerate that trend.

Congress should be concerned that the FCC is apparently willing to give priority to economic concerns over the public's right to a diversity of information. The rationale presented by the FCC's staff report is that economies of scale resulting from vertical integration will guarantee that cable services are provided efficiently and at cost savings. We do not accept that premise as valid as the probable cost savings from increased competition provided by new market entrants are not considered. In any case the primary concern of the FCC should be the public's right to a diversity of information and, clearly, reliance on the efficiency of national media conglomerates will not guarantee diversity of information.

C. Court challenges to State and local authority

In addition to its earlier challenges to the authority of the Federal government to regulate cable, the industry has initiated a series of challenges to the authority of State and local government to regulate cable. The extent of the local government's authority, which is based on the police power, is being litigated in a number of cases. If any of these challenges is successful, then many of the provisions of existing franchise agreements will be invalidated. The legal bases for these challenges include the first amendment, the antitrust laws, and irrevocable license based on vested property rights.

Two cases have been brought against the city of Boulder, Colorado (*Boulder* v. *Community Communications Company I and II*) and one—Boulder I—has already been argued before the Supreme Court. In Boulder I, a cable company (a subsidiary of TCI), which had a license to own and operate a cable system, sued the city under the Sherman Act because the city imposed a 90-day moratorium on construction under that license. The city's purpose in imposing the moratorium was procompetitive. Without a moratorium, the city believed, the licensee would deliberately wire enough of the city to discourage other cable companies from offering bids for the franchise. The city had decided to issue a franchise because the licensee was providing poor service and had made no effort to improve service.

The cable company/plaintiff's theory under the antitrust laws was simple: The moratorium was exclusionary in effect because the licensee was temporarily prevented from expanding its business operations. The Courts of Appeals of the Tenth Circuit rejected the cable company's theory, finding that in a home rule State, such as Colorado, cities are immune from antitrust liability for governmental actions under the State action exemption of *Parker* v. *Brown*, 317 U.S. 341 (1943). However, in a ruling with major implications for cities, the Supreme Court reversed the appellate court's ruling and determined that the State action exemption does not extend to cities. Governmental actions of all cities, including home rule cities, can be challenged under the antitrust laws. These actions will only be exempt from antitrust challenge if the city's action is carrying out a "clearly articulated and affirmatively expressed" State policy to displace competition with local regulation. This means a radical expansion on municipal liability under the antitrust laws: any governmental action that has the effect, temporary or otherwise, of limiting the operations of a cable operator or any other business entity will be subject to challenge under the antitrust laws. If the city can be liable for any of its many discretionary actions which have exclusionary effects, then the franchising process will be fraught with risk, with the possibility of treble damages.

In Boulder II, Community Communications Company challenged the city's division of the city into franchise districts on antitrust and first amendment grounds. The antitrust argument in simple terms was that limiting the operation of the cable company to its designated district was exclusionary. The first amendment argument was that because the cable operator had absolute first amendment rights, districting was a prior restraint on the cable company's right to disseminate information and service standards, such as required data transmission and two-way services were content-based restraints on expression.

The Court of Appeals of the Tenth Circuit reversed the district court's grant of a preliminary injunction against the city and remanded the case to district court for a trial to determine "whether cable's unique attributes warrant, in first amendment terms, the nature and extent of regulation the city seeks to impose on cable companies. . . ."

In *TCI Cablevision, Inc.* v. *City of Jefferson City, Missouri*, the cable company/plaintiff has challenged the city's efforts to initiate a refranchising by issuing a request for proposals. The cable company has brought a number of claims, including first amendment, equal protection, civil rights, and irrevocable license claims. The plaintiff's claim is that "having held itself out as willing to provide its rights-of-way to cable television operators, the city became obligated to provide such rights-of-way on a nondiscriminating basis to any cable television operator able to string its lines on utility poles . . . and willing to pay to the city a reasonable fee for such service." In effect, the cable company's claims is that once a franchise or license is granted, it is in perpetuity.

In a recent case brought in district court in Massachusetts, a cable company challenged rate regulation of basic subscriber service, permitted under Massachusetts law in areas of the State in which the quality of over-the-air television is poor, as a violation of its first amendment rights.

III. PUBLIC POLICY OBJECTIVES

Before a cable bill is drafted, the relevant public policy objectives should be established. We recommend that Federal policy should: (1) Promote a diversity of voices in the media; (2) Insure the development of locally oriented programming and services; and (3) Promote competition. Cable systems are becoming increasingly important local communications systems as cable develops the capacity to provide a wide variety of one- and two-way communications services in addition to the more traditional television programming. Cable will provide a vital communications link in the cities, offering substantial local, as well as interstate, communications. Any major change in the regulation of cable will have a substantial impact on local communities and their citizens. The cities, therefore, have a direct interest in the development of cable policy and believe that governmental policy affecting cable, whether Federal, State, or local, should enhance these public policy objectives.

To insure the promotion of a diversity of voices in the media, the development of locally oriented programming and services, and the promotion of competition, the Federal Government should adopt a structural approach. Two models are available for consideration: (1) Complete separation by functions (operation of the facility and the provision of services and programs are the two relevant functions) ; and (2) Limited separation (mandated leased access).

A. Complete separation by functions

Under a complete separations policy, the programming and services function would be completely separate from the operation of the facility. Such a Federal policy would eliminate the concern about concentration of ownership and vertical integration and the need for content-related cable regulations. Under this approach, the cable operator would simply operate the system as a transmission facility, functioning much like a common carrier. He would be required to provide nondiscriminatory rates and access rights to all programmers and service providers. If the cable operator wanted to offer programming or services, he would have to establish a separate corporation.

Such a system of separations would be profitable for the cable operator but arguably not as profitable in the short run as the present arrangement because the cable operator's programming and services offerings would be subject to direct competition from other programmers and service providers as a result of their access rights to the system. Access rights for programmers and service providers would guarantee the development of new programming and service sources, vastly expanding the supply of cable services available for sale to consumers and businesses by cable. Thus, in the long run, the cable operator might actually make greater profits as the volume of programs and services transmitted via cable increased.

B. Limited separation (mandated leased access)

A structural approach which may be more practical than complete separations because it requires insignificant changes in the structure of the existing cable industry is mandated leased access. Under this approach, all cable operators would be required to make available to third party lessees a significant number of channels on a nondiscriminatory basis. A mandated leased access requirement would provide many of the same benefits as the fully separated model. In addition, the cable operator would retain an important economic incentive—the right to program and provide services on a significant number of channels—that should encourage the rapid building and upgrading of cable systems. The disadvantage of the leased access model is that the cable operator has an incentive to charge high rates for the use of those channels in order to discourage competition with its own programming and service offerings. This incentive would be a result of not requiring the operator to separate the operation of the transmission facility from the provision of programming and services. In the fully separated model, the operator would have to charge all users, including any affiliate providing programming or services, the same rate for the use of a channel.

IV. RECOMMENDATIONS

At this time, NLC would like to make some preliminary recommendations as to what cable legislation should encompass. We make these recommendations with some reluctance for two reasons: (1) Cable is a rapidly evolving medium, making the task of establishing the ideal regulatory framework difficult; and (2) The system of federalism has provided a laboratory for regulatory experimentation at the State and local level. However, we are realists and we recognize that the Communications Act's inadequacies, the FCC's apparent willingness to change the cable industry's structure by allowing unrestricted network entry into the business, and the industry clamor for deregulation both in Congress and the courts make Federal legislation inevitable.

As regulators of cable, we are cognizant of the rapid development of technology and the new communications possibilities represented by cable. We hope that Congress will not make any premature policy determinations—such as simply regarding cable as a substitute for traditional broadcast television. Cable is clearly a unique medium and therefore Congress should establish a regulatory framework that deals with these special features.

Our preliminary recommendations are that: (1) A coherent jurisdictional framework should be established; (2) Access for governmental educational, public, and third party lessees should be guaranteed; (3) Rates for basic cable service should be regulated; (4) Franchise fees should not be limited by Federal law; (5) Ownership of cable systems by a wide variety of entities—including municipalities—should be encouraged; and (6) Publicly owned utilities should not be subject to FCC regulation for pole attachment fees.

A. Establishment of a coherent jurisdictional framework

A coherent jurisdictional framework, defining the regulatory responsibilities of each level of Government, is necessary to eliminate the regulatory uncertainty of the existing regulatory framework. Federal law should establish national policy guidelines—perhaps through the addition of a separate cable title to the Communications Act—but authority for implementing that policy should be delegated to State and local government. The franchising authorities, as established under State law, should have primary responsibility for implementing and enforcing that policy.

Delegation of implementation and enforcement responsibilities to State and local government is consistent with the principles of federalism. State and local governments have historically had broad power under the tenth amendment to set the terms and conditions for the use of public rights-of-way. Specific delineation of that authority under Federal law would simply be an affirmation of an appropriate governmental responsibility.

The role of the FCC should be specifically limited as the FCC clearly does not have the capacity to play a significant oversight role in the regulation of cable at the local level. This lack of capacity has been demonstrated by the FCC's performance in a number of areas: (1) When the FCC attempted to set franchise standards, the development of cable was impeded; (2) The FCC procedure for granting waivers to telephone companies from the crossownership ban in rural areas in cumbersome and time consuming, thereby making the exemption virtually meaningless; and (3) FCC regulation of franchise fees has resulted in the establishment of an unsatisfactory and time consuming waiver process and unnecessary Federal intervention in State and local matters.

B. Access for governmental, educational, public, and third party lessees

Access is the overriding public policy issue and Federal law should establish broad access rights. In recognition of the fact that the cable industry has invested capital on the premise that each system operator had the right to program a significant percentage of the system's channels, we will not recommend that Congress adopt a policy of requiring full separations. A practical alternative is for Federal law to establish minimum access requirements. These access requirements should be broadly defined under Federal law so that each franchise agreement can include whatever access requirements meet the community's particular communications needs and their enforcement should be at the State and local level. Such minimum requirements have been made necessary by the growing vertical integration of the cable industry, the probable entry of the networks into cable, and the Supreme Court's invalidation of the FCC's access standards.

***1. Access for governmental, educational, and public purposes.*—State and local governments should be specifically authorized by Federal law to require the set-aside of channels for governmental, public, and educational access purposes. The specific number of those channels and a mechanism for allocating the use of those channels probably can best be established by voluntarily negotiated agreements between the franchising authority and the cable operator, rather than by rigid Federal requirements. The franchising authority should have the power to set minimum requirements, based on its assessment of community needs, in the request for proposals or the regulatory ordinance.**

***2. Access for third party lessees.*—Federal law should guarantee that programmers and service providers other than those selected and controlled by the cable operator have access to cable systems to insure diversity of information and price competition. We believe that mandated leased access requirements will insure that those public policy objectives are met without reducing the cable operator's profits (because he will retain the right to program and control a substantial portion of the system's channels).**

Federal law should include a requirement that a minimum percentage of channels be set-aside for use by third party lessees at nondiscriminatory rates. Our preliminary recommendation is that the minimum percentage of channels designated for third party leased access should be: (1) 30 percent of the channels on systems with 100 or more channels; (2) 25 percent on systems with 50 to 99 channels; (3) 20 percent on systems with 25 to 49 channels; and (4) a negotiated number for systems with fewer than 25 channels.

Federal law should, without imposing a cumbersome Federal regulatory framework, guarantee that the rates charged for the use of these channels are nondiscriminatory. One method would be to require that all users pay the same rates, thereby eliminating the possibility of discrimination. Another method would be to require that the lessee pay a percentage of his gross revenues (a sort of royalty) and a minimum fee for the use of the channel. A third option would be to require that the operator issue a rate tariff by classification of channel user, provided that the rates and classifications are reviewable.

C. Regulation of rates for basic subscriber services

The franchising authority must retain the right to regulate rates for basic cable service. First, limited regulation of the rates (i.e., for basic cable service) gives the franchising authority an opportunity for regular oversight of the cable operator's performance under the franchise agreement. Second, the quality of free over-the-air television is likely to decline as more programming is directly sold to subscribers as pay cable service or subscription television. If this development continues, cable should be required to provide a minimum level of service roughly equivalent to existing free television at reasonable rates. Third, regulation of the rates for basic cable service is essential to limit the cable operator's ability to cross-subsidize his pay cable offerings.

The number of channels, programming, and services included in basic cable service should be determined by voluntarily negotiated agreement between the franchising authority and cable operator. At a minimum, basic cable service should be defined as including the retransmission of all local over-the-air television signals and the transmission of the public, educational, and governmental access channels and some distant signals, as established by negotiation, as well as charges for installation, converters, lock-out devices, and subscriber deposits.

The franchising authority should not be authorized to regulate the rates for pay cable if Federal law establishes the right of access for third party lessees at nondiscriminatory rates. Minimum leased access requirements (as described above) would guarantee price competition between pay programmers, eliminating the need for regulation of these subscriber rates.

The right to regulate rates for basic cable service must be retained even if Federal law guarantees leased access and thereby price competition in the provision of pay service. If the franchising authority is not allowed to regulate the rates for basic cable service, then the cable operator would be able to subsidize his pay cable costs by using revenues from basic cable service (these subscribers are a captive market) to underwrite his pay cable costs. Genuine competition between pay programmers would not become a reality because of the cable operator's ability to cross-subsidize.

A more troublesome question for policy makers is whether the rates for new cable services—such as data transmission and two-way interactive services—should be regulated. Clearly some of these services are more analogous to telephone than to television services and may, at some point, be deemed essential services (e.g., security systems). A possible solution may be to permit deregulation of the rates for those services when the system is in full compliance with the leased access requirements outlined above and other service providers have the opportunity to provide competitive services.

D. Franchise fees

We are strongly opposed to codification of the existing FCC limit on the franchise fee of three percent of gross revenues (that fee may go as high as five percent if the franchising authority obtains the approval of the FCC and the additional revenues are used to cover cable-related expenses). Any limitation on the franchise fee is a Federal preemption of basic State and local taxing powers and is not justified by any evidence. Excessive franchise fees are constrained by a number of factors: (1) The courts have repeatedly ruled that franchise fees must be reasonable and should not produce more revenue than is necessary to cover the cost of regulating the licensed activity; (2) Cable companies can (and should) refuse to compete for franchises if the franchishing authority's proposed fee is unreasonable; and (3) City officials are politically accountable for all tax levies, including franchise fees.

We know of no other Federal protection of an industry from State and local taxation. In fact, telephone companies and other utilities which provide essential services are frequently subject to higher franchise fees. An operator of a cable system receives an extraordinary benefit—the right to build most of his capital plant on public property—and the franchising authority should be able to tax the cable operator accordingly.

E. Ownership of cable systems

Ownership of cable systems by a variety of entities—municipalities and publicly owned utilities, foreign owned companies, networks and broadcasters, and telephone companies and cooperatives—may increase competition in the cable industry and result in rapid implementation of new technologies and the development of new services. The existing cable industry is exhibiting signs of concentrated ownership and vertical integration and can no longer be treated as an infant industry, in need of special protection from competition. Nonetheless, the networks and broadcasters should not be allowed to own cable systems unless strict conditions are established that prevent the networks and broadcasters from dominating the industry and controlling local electronic media.

1. Municipalities and publicly owned utilities.—Federal law should not prohibit municipal or public ownership of cable systems. In many areas of the country—both urban and rural—the cable industry has failed to provide cable service or has provided low quality service. Municipal or public ownership is frequently the only alternative in those areas. The cable industry has justified its proposal to ban municipal ownership by arguing that Government ownership of the media is a threat to the first amendment. That argument is specious: The programming decisions are usually made by a nongovernmental entity (e.g., in most municipally owned systems, a separate public corporation or a cable company/lessee makes the programming decisions). The cable industry's actual reasons for advocating a ban on municipal (or publicly owned utility) ownership are to limit potential competition and to invalidate buy back and forfeiture provisions of franchise agreements. Because of their powers retained under the tenth amendment, States and local governments have extensive powers to own and operate businesses of all kinds.

2. Foreign ownership.—Federal limits on foreign ownership cannot be justified at this time. Since only about five percent of subscribers are served by foreign owned companies, foreign companies do not represent any kind of a threat to the domestic cable industry. In fact, the participation of foreign owned companies in the bidding process for franchises serves to increase competition, thereby improving the quality of cable service. The decision to preclude foreign ownership should be made at the local rather than the Federal level.

3. Networks and broadcasters.—Broadcaster and network ownership of cable systems will accelerate the trend toward concentrated media ownership. Therefore, they should not be allowed to own cable systems until Congress adopts strict access requirements that guarantee a diversity of voices on each system. Broadcast licensees should be prohibited from owning cable systems in their own markets in order to prevent monopolization of local electronic media markets.

4. Telephone companies.—The FCC's staff report on crossownership recommends retention of the telephone company-cable crossownership ban so that cable will be developed as a competitive alternative to the telephone company's local distribution facilities. While we appreciate the FCC's concern for competition, we do not think that cable is likely to function in the near future as an alternative to the telephone system in two-way switched voice communications. We believe that, at a minimum, telephone companies and telephone cooperatives should be allowed to provide cable service in their exchange areas. Unlike the MSO's and the networks, telephone companies rarely have any relationship to other media interests and therefore their entry into cable does not pose a threat to diversity of voices (obviously the same argument cannot be extended to the American Telephone and Telegraph Company (AT&T) which because of its sheer size would have the economic power to control a substantial portion of cables' programming and services). The primary problem presented by telephone company ownership of cable systems is the potential for cross subsidization of cable operations with revenues from telephone service. We believe that, with appropriate structural safeguards, such as a separations requirement of some sort, cross-subsidization will not become a problem. AT&T should not be allowed to provide cable service unless a strict complete separations policy (discussed in III A) is applied to its cable operations.

F. Pole attachment fees

Cable operators should not have the right to attach their cables to the poles of publicly or municipally owned utilities at fees established by FCC formula under Federal law. Under the existing law governing attachment fees for the use of the poles of investor owned utilities, those utilities were effectively required to subsidize the capital costs of the cable industry. Extension of that law to municipally and publicly owned utilities, absent a strong showing of excessive charges by those utilities, would clearly be an unjustified intrusion into State and local matters.

V. CONCLUSION

Federal cable policy must insure the promotion of competition and diversity of voices and the development of locally oriented communications services. Those objectives cannot be attained unless State and local regulation of cable is retained and minimum access requirements are established. The ongoing changes in the cable industry (the growing domination of the industry by national conglomerates and the expected entry of the networks and broadcasters) and the telephone industry (the implementation of the FCC's computer inquiry II decision and the divestiture of A.T. & T.'s 22 operating companies under the recent settlement of the government's antitrust suit) suggest that a complete restructuring of the telecommunications industry is likely. The Federal government has the responsibility to insure that the public interests is not adversely affected by these developments.

As the primary regulators of cable, we bring a unique perspective to the debate on cable. We hope our preliminary recommendations are useful to the committee and look forward to working with you in the future as the complex issues are debated and worked out.

The CHAIRMAN. Thank you.

Mr. Hirshfield?

Mr. HIRSHFIELD. Thank you, Senator Packwood and Senator Gorton.

I am Jim Hirshfield and I live in Bellevue, Wash. I am president and owner of Summit Communications, which is a small Washington company which operates about 9,000 cable subscribers in four systems.

I also am privileged this year to serve as president of the Washington State Cable TV Association, representing some 65 cable operations with approximately 500,000 households in the State receiving service and I am a director of our National Cable Television Association.

The first comment I want to make is to express concern that I think a number of cable operators have of the implicit intimidation that any cable operator faces when he gives testimony such as this. I'm quite concerned about my relations in cable towns who may read this record and others may have concern about the February 1 deadline Mr. Greif referred to in Seattle when their franchise applications are due. For instance, an operator's chance or opportunity for selection in that application process may be jeopardized by his comments here.

To the question of should cable service be regulated, I would answer no.

The following are the false assumptions I think are made by people who suggest regulations:

First, the basic false assumption is that cable TV is a monopoly. They also say that cities need to control the franchising process, but that seems to be more of a conclusion than an assumption.

Third, they say cable provides essential services, but for instance in the city of Seattle something less than half of the households with cable available subscribe to cable. It doesn't seem to be an essential service. Fourth, they say cable provides unique opportunities in local programing which may or may not be true. There are other outlets for such programing. In any case that's a service that the market doesn't seem to be willing to pay for.

In Seattle there is competition, my systems have competition. In addition to the comment that only 40 percent of the people in Seattle who have cable are subscribers I might tick off a few things. There are six over-the-air TV stations in Seattle. There are over 35 applications for low power TV licenses in Seattle. There is of course a telephone company. There are fire district lines that are in place in areas of Seattle. The State highway department has stations along Interstate 5 going through the city that are interconnected with a television system. There is a local telephone reseller starting up about a mile north of here. There is a big satellite dish on one of the buildings near the Alaskan Expressway. I can go on but the answer is that there is competition.

I would conclude this portion by saying that the argument for regulation really serves itself and not the public. Once the assumption is made that cable is a monopoly the municipalities then take anticompetitive steps to insure that only one operator can serve a community. We have a chicken and egg situation. I think you have to really question why there are only six communities in the Nation with more than one cable operator operating.

To the question of regulating subscriber rates, I feel that cities generally do not function well as ratemaking bodies.

I am reminded of a council meeting I went to in one of our cities where the city councilmen or one of the city councilmen asserted that we had not submitted financial statements prepared by a CPA as was required in the franchise. We indicated we thought we had. He said "Who is this fellow Arthur Anderson, it doesn't say CPA after his name." Those are some of the things you get into.

The same city, when we applied for our most recent rate increase, sent a questionnaire out to every home in town asking them if our rates should be increased. The most amusing thing about the questionnaire was that over a third of the people said yes. I stood before that city council and I said asking that question of my customers is like me asking my 3-year-old son if he wants to go to bed. You know what the answer is going to be before you ask the question.

Regarding franchise fees: Without going into detail I just would like to quote what the mayor of a Washington city, Port Townsend, told a councilman who asked what franchise fees were for. He told this councilman, "It's for the administering costs of operating of the franchises, to cover those costs." The councilman said, "Well, Mr. Mayor, what are those costs?" And the mayor said, "Collecting the tax."

In summary cable TV companies should not be used by cities to be their tax collectors.

Perhaps the most important point I saved for last. Most cities and municipalities are really great to work with. They are understanding, they are helpful and they let our small company run its business. What

I'm talking about here in the way of abuses is certainly the exception and not the rule. When these abuses do occur, however, there should be somewhere for us to go.

Thank you for your interest in these comments.

[The statement follows:]

STATEMENT OF JAMES A. HIRSHFIELD, JR., PRESIDENT, SUMMIT COMMUNICATIONS, INC.

INTRODUCTION

My name is Jim Hirshfield, and I live at 63 Skagit Key in Bellevue, Washington. I am President and owner of Summit Communications, Inc., a small Washington company which operates approximately 9000 subscribers in four cable TV systems. I must be the typical small businessman. I am typing this statement myself on Saturday.

This year I also serve as President of the Washington State Cable TV Association, representing some 65 cable operations serving over 500,000 households in the state. I am also a Director of the National Cable Television Association.

I. Should cable television services be regulated?

No.

The following are the false assumptions made by people who believe in regulation:

a. There is no competition for the consumer buying cable television services—a false assumption.

b. Cities need to control the franchising process and the business of the operator (we used to go to cities for the legal right to occupy the public rights-of-way, and they controlled use of these rights-of-way).

c. Cable provides essential services. (What are these? Perhaps in the future, but only in competition with other providers. Today all we provide is entertainment and a second—a distant second—network to telephone companies.)

d. Cable provides unique opportunities in local programming. (This may or may not be true, what with Low Power TV, Educational TV, Multipoint Distribution Systems (MDS); and in any case is probably irrelevant, as few if any people buy cable service for local programming).

People favoring regulation use syllogistic reasoning, based on the false assumption of monopoly. This results in municipalities putting franchises out to bid, effectively creating the increased concentration of control they already assume exists. This bidding process requires cable operators to commit to expenditures based not on market decisions, but on decisions of administrative and elected officials.

I will not repeat all the arguments why cable is not a monopoly. It is simply one of a number of conduits for "displacing electrons". My systems have competition. Seattle has it. If not, then why do only 40 percent of households with cable available subscribe to the service? In addition to TV cable Seattle has six off-air TV stations (the last one was purchased for $6 million from a school district two years ago), an MDS operator, over 35 Low Power TV applications and—of course—a telephone company. Its long standing security companies use telephone circuits; it has its own fire alarm circuits in areas of town. The state highway department has viewing stations along Interstate 5 in the Seattle area interconnected with a television system. A local telephone reseller is starting up; Satellite Business Systems has a 7.7 meter satellite dish a mile north of this building; Boeing has been out for quotes to inerconnect all its facilities with a broadband network; Foster and Marshall's Account Representatives will soon be able to work out of their homes with microcomputers accessing the main Shearson, American Express data base. Need I continue?

My answer is: No—cable television services should not be regulated except as to conditions for street use. The standard Pacific Northwest Bell pole attachment agreement contemplates multiple cable TV users. What has been the result of municipalities trying to make their monopoly assertion come true by controlling the marketplace and franchising only one operator?

The first applicant usually is not franchised, but stimulates the city to go out for competing applications. In one town we applied for a franchise—the first applicant—in August of 1979. No cable franchise has been granted by the city as of this date. King County, Washington, has large areas without cable service which were franchised exclusively in the mid 1960's, and are not available to a competing operator who might want to build them. This monopoly assumption and the resulting regulation hurts us vis a vis our actual and potential competitors. We are not just competing in the marketplace. We are also competing in the political arena for the right to be competitive in the marketplace.

I would like to say a word here about the role of consultants. As soon as a company applies for a cable franchise a Consultant appears and tells the city they do not know what they need to know about cable, and thus should hire him. Happily they will not have to pay for his services, as the successful franchise applicant will be required to do that. An easy sell? You bet. The Consultant usually gets the job on those terms. His interests generally are to create a large process which he can help the city control, and point out all the things he has "gotten" for the city through this process is justification for hiring him.

In conclusion, the argument for regulation serves only itself—not the public. It assumes cable is a monopoly, the basic wrong assumption. Based on this assumption, municipalities then take anticompetitive steps to ensure that only one cable operator can serve a community: to regulate rates; and to charge unreasonable fees. This generates opportunities for graft, such as in the Massachusetts situation reported recently in the "Wall Street Journal", and leads to abuses by municipalities of an anticompetitive nature. It is the most critical of these abuses which the cable provisions of S. 898 addressed. Cable operators had no where else to go for relief. Perhaps the broader question of these municipal anticompetitive practices will be addressed at some point. At present, we need a place to go for relief.

II. Should local governments regulate subscriber rates?

As noted above, rate regulation is based on the false assumption of monopoly. It is used by franchisors for leverage on a wide range of issues, for which relief is generally available in cable franchises more directly. Cities generally do not function well as rate making bodies. Return on investment is seldom if ever considered. Most franchisors do not have the capability to act as rate making bodies. I am reminded of one Council meeting where a City Councilman asserted we had not complied with a franchise requirement to submit financial statements prepared by a CPA. "Who is this fellow Arthur Anderson", he said. "It doesn't say CPA after his name."

The best example I can give of why cities should not regulate rates is shown in Exhibit A attached hereto, a newspaper article about one of our cable systems. The city responded to our request for a rate increase by going out with a questionnaire to see if people thought our rates should be increased. The amazing thing was that 36 percent of the town said we should be able to raise rates. I thought that was surprisingly high!

III. Should franchise fees be limited?

Yes. Without going into detail, let me quote what the former Mayor of Port Townsend told a Councilman who, when told the franchise fee was for costs of administering the franchise, asked what those costs were. "Collecting the tax", said Mayor Steve. Cable TV companies should not be tax collectors for municipalities.

IV. Should pole attachment rate regulation be broadened to include public utilities and extended in terms?

Yes. As President of our state association I have become active in this area. Exhibit B is a detail sheet showing what three Public Utility Districts (PUD's) would be required to charge for poles under the federal formula currently in effect. Rates for poles would range from $1.03 to $1.33. Actual rates range from $6.00 to $10.00. We presently have no recourse when a public utility raises its rates. With the WSPPS cost overruns and money pressures, a number of PUD's are raising their pole rates to unreasonable levels. This simply makes us their "tax collector" in areas where we do business, and prevents us from extending service to rural areas of the state where low housing densities make it impossible to spread these high costs over enough users.

It is important to remember that, if there is any monopoly in this whole discussion, it is the control of that pole line by the utilities. Municipalities will generally not allow an additional pole line to be constructed on their rights-of-way.

V. Should municipalities own cable systems?

Simply put, I do not understand how this is a proper function of government in a non-socialist society. It establishes a public monopoly against which private operators cannot compete. It also raises substantial first amendment questions.

VI. What can the Federal Government do?

1. Give the cable television industry recourse on these worst abuses.
2. Be aware of the implicit intimidation to any cable operator who speaks out on these issues. I am quite concerned about my relations in cable towns who might read this record. Others may have concern about the February 1st deadline for franchise applications for the Seattle Central District. Will willingness to speak out on these issues prejudice an operator's chance for selection in that application process?

Perhaps the most important thing I saved for last. Most cities and municipalities are great to work with. They are understanding, helpful, and let our small company run its business. What we are talking about here in the way of abuses is certainly the exception—not the rule. When abuses do occur, however, there should be somewhere to go.

Thank you for your interest in these comments.

EXHIBIT B

WASHINGTON STATE PUD'S POLE ATTACHMENT RATE CALCULATION USING THE FEDERAL FORMULA

	Cowlitz	PUD No. 1 Klickitat	Snohomish
Gross pole line investment	$4,103,471	$3,611,242	$24,245,999
Less depreciation reserve	2,103,471	−1,103,051 −187,000	−4,683,161 −1,685,932
Net pole investment	2,000,000	2,231,191	17,876,906
Delete percent for cross arms and other unused items	32.5	31	36
Net	1,350,000	1,601,622	11,441,220
Number of poles	22,297	17,345	96,890
Average investment per pole	$60.55	$92.34	$118.08
Annual carrying charges (percent)	23	19.5	14.6
(17×19) Total annual bare pole cost	13.93	18.01	17.24
Space used by cable pursuant to 47 C.F.R., Sec. 1.1404 (9)(11) is 1 ft of 13.5 ft or 7.4 percent	7.4	7.4	7.4
Pole attachment rate (21×7.4 percent)	$1.03	$1.33	$1.28
Actual rate charged	7.11	10.00	6.00

[1] Assume.

The Chairman. Thank you very much.

Ms. Besserman?

Ms. Besserman. I am a council member of the city of Vancouver.

First I would like to thank the Senators for the opportunity to speak on behalf of the Association of Washington Cities and my city of Vancouver. A more detailed presentation is included in my written testimony and I would also like to submit for your review Vancouver's television ordinance and the city's franchise agreement with the cable operator.

The Chairman. It will be in the record.

Ms. Besserman. I believe that these provide an example of how a city can on its own meet the needs of the community and the cable operator to a fair and responsible regulation.

In this brief presentation I would like to comment on three main points; first Federal restrictions on cable operators such as the requirement must carry stations, could be relaxed. In previous years the requirements may have been necessary to protect the interests of the communities, however it has been the experience of Vancouver and other communities that have recently undergone a franchising process the Federal standards are no longer necessary. There is sufficient competition among companies for the award of franchise that Federal requirements have been exceeded. Cable proposals, which are the basis for franchising agreements, focus on local not national needs. I should emphasize though that my comments on deregulation are valid only if the communities are free to enforce the franchise agreements and I'll return to this issue in a minute.

The second point that I would like to make is that there are valid reasons for regulation of cable operators by local communities. One is that for all practical purposes when a community grants a franchise it grants a monopoly. Although the Vancouver franchise is a nonexclusive franchise, we have no illusions about another company jumping in with a $50 million investment simply to compete with an existing established system.

Another reason for local control is that the cable system, like other utilities, depends on the use of the public right-of-way. Certainly the public has a right to expect certain performance guaranties in return for the use of this public resource.

My third point is that Federal legislation that has been considered in recent years could seriously damage the ability of local governments to respond to community needs.

One proposal which wasn't included in the initial draft of S. 898 would prohibit local communities from requiring public access channels as a condition of franchise awards. We have found both through the ascertainment studies performed by cable operators and through hours of public testimony that community programing is one of the most important aspects of the Vancouver franchise. Briefly it brings us closer to the rest of the State of Washington and takes us out of the Portland media shadow. Some other communities find that equally important. Some do not. The important thing is that communities through their representative bodies should be free to decide whether or not they will have requirements such as access channels.

Another proposal which was included in S. 898 would prohibit local governments overseeing basic subscriber rates. The fact that the cable system is a monopoly by itself justifies rate review, but even more important, rate reviews is the only real tool the governments have to make sure that the cable company lives up to the promises it has made.

Cable applicants come to a community fully expecting to live up to their promises. Cable companies are free to avoid communities that they consider have excessive regulations. The only other recourse the communities enforcing franchises is franchise revocation, and I won't belabor the point that revocation is an extremely traumatic process.

To summarize then, deregulation, in a strict sense of the term, is an appropriate subject for congressional consideration. But I feel strongly that Federal laws that would weaken local franchising authority are not in the best interest of the public.

As a final comment I note that Senator Gorton voted for the "Goldwater amendment," which removed cable regulation items from S. 898. On behalf of the Association of Washington Cities I would like to thank you for your vote of confidence in community self-determination.

[The statement follows:]

STATEMENT OF ROSE BESSERMAN, COUNCIL MEMBER, CITY OF VANCOUVER

Because it has so recently completed its cable franchising process, Vancouver is in a unique position to evaluate the effect on local governments of proposed federal legislation. This written testimony will focus on the following points:

1. Competition among companies for the award of a franchise is sufficient that federal restrictions on the cable industry can be relaxed.
2. Federal legislation that would inhibit cities' ability to enforce franchise agreements would completely undermine local government franchising authority.
3. Because cable systems use the public rights of way, and are for all practical purposes monopolies, the right of local governments to regulate cable systems should not be interfered with by the federal government.

VANCOUVER CABLE FRANCHISING PROCESS

Because the proposed service area included urban areas not yet within city limits, the entire franchising process was completed as a joint effort between the City of Vancouver and Clark County. A detailed Request for Proposals was issued in the summer of 1980. Very few requirements were imposed upon prospective applicants; however, the applicants were encouraged to use creativity in areas such as public access programming, local origination programming, etc.

Six highly competitive state-of-the-art proposals were submitted. All went beyond FCC requirements for program coverage and former requirements for access channels. Even with considerable attention to public access, an institutional cable system, local origination, and reasonable subscriber rates, all companies projected a healthy return on investment.

The proposals were weighed according to several criteria. These included access channel availability and support, coverage of Washington State programming, and cost to subscribers, as well as the adequacy of the proposals in terms of technical issues, entertainment programming, financial strength and demonstrated performance in other areas.

The selection process included a detailed consultant analysis, 14 meetings of the CATV Commission (an advisory and regulatory body appointed by city council and county commissioners), and several joint city council/county commissioners meetings. Many hours of public input were received at several stages of the selection process.

The final outcome was the selection of a proposal which addresses many of the needs of the Vancouver urban community. Two of the most important include:

Importation of programming from other Washington cities. This will strengthen the community's ties with the rest of the State of Washington; currently, off-air broadcasts available in Vancouver are focused on the State of Oregon.

Emphasis on public and institutional access, and coverage of Vancouver news and events. This will strengthen the community identity and help Vancouver emerge from the Portland media shadow.

The franchise, which incorporates by reference all provisions of the company's proposal, was formally awarded on October 26, 1981. The franchise term is 15 years. Some aspects of the franchise, such as adherence to construction deadlines and technical performance standards, are enforceable through specific fines and charges. All other aspects of compliance with franchise requirements are enforceable only through the mechanism of periodic rate reviews, or outright revocation of the franchise itself.

WHAT WOULD BE THE EFFECT OF PROPOSED LEGISLATION ON VANCOUVER'S FRANCHISING PROCESS?

Items which have been proposed for federal legislation would:

1. Prohibit municipal ownership of cable systems.
2. Reduce the ceiling on franchise fees.
3. Prohibit access requirements by municipalities.
4. Prohibit local governments from regulating basic subscriber rates.

Not all of these were specifically included in S.898, but all have been mentioned as possibilities for federal legislation.

Because Vancouver did not consider municipal ownership, the first item—prohibition of municipal ownership—would have very little effect. However, other communities may feel differently, and should be allowed to decide that cable systems—like water or electric systems—will be municipally owned.

The second item would also have little practical effect on cities in Washington, since franchise fees could be substituted with utility taxes. Federal limits on franchise fees would nonetheless be an infringement of local control.

The third item—prohibiting access requirements by municipalities—would have seriously undermined Vancouver's franchise selection process. As noted above, community access channels and programming will be one of the most significant features of the cable system in strengthening the sense of community in Vancouver.

The fourth item—prohibition of basic subscriber rates regulation by local governments—would have a devastating effect on the ability to enforce franchise agreements. The franchise selection process in Vancouver would have been reduced to a meaningless exercise if the only enforcement tool allowed to the city was the outright revocation of the franchise. (Because of the heavy capital investment in a cable system, franchise revocation is an extreme means of franchise enforcement.)

RECOMMENDATIONS ON FEDERAL LEGISLATION

The current administration has espoused two important philosophies: federal deregulation, and transfer of responsibilities from the naional government to state and local governments.

Congressional action such as that described in the section above would run counter to both philosophies. Under the guise of deregulation a powerful and growing industry, the proposed legislation would impose regulations on local governments themselves. Further, he proposed legislation would work against local control by allowing the national government to pre-empt the authority of local governments to respond to community needs and concerns.

True federal deregulation is a noble cause. Under this theme, federal legislation would limit the FCC's authority to regulate the cable industry. In the Vancouver franchising process, FCC regulations had little effect on the quality of proposals; in competing for the franchise award, cable applicants focused on local needs, and exceeded federal requirements. Thus, it seems quite appropriate for the federal government to limit its own regulation of the cable industry.

On the other hand, it is absolutely wrong for the federal government to interfere with the franchising authority of local governments. The local community must be allowed to decide whether it wishes to regulate subscriber rates, require certain public access channels, or to own the cable system itself. Cable operators have as much opportunity to make their feelings known to local legislative bodies as do the citizens themselves, and responsible decisions will continue to be made at the local level. Communities will choose different degrees of regulation over cable systems depending on the needs of the community; this expression of community choice is one of the key ingredients of the theme, "local control."

Some cities, such as Spokane, have chosen not to regulate basic subscriber rates. Vancouver, on the other hand, has reserved the right to regulate subscriber rates based on criteria that are spelled out in the city's cable television ordinance. A basic criterion recognizes the cable system's position within the communications market place, and states that a fair rate of return on the cable operator's investment must be considered during a rate review.

There is no question that local governments should be free to regulate cable operators. For all practical purposes, when a community grants a franchise, it grants a monopoly. Once the cable operator has constructed the system, citizens have no real choice over the kind of cable service that is provided. Regulation of rates and services is a fair exchange for the granting of a monopoly. Cable operators will always be free to avoid communities that they consider to have excessive regulations.

In summary, legislation that would limit the federal government's involvement in local cable systems is completely acceptable. Legislation that would tie the hands of local elected officials is simply a gross form of protectionism that favors a strong industry at the expense of community residents, and should be avoided by Congress.

ACKNOWLEDGEMENT

We note that Senators Gorton and Jackson voted in favor of an amendment to remove cable-related items from S. 898. We appreciate this action, and hope that efforts will continue to be made to support community self-determination.

The CHAIRMAN. Mr. Jordan?

Mr. JORDAN. Senator Packwood and Senator Gorton.

My testimony has already been transmitted to you and since you have read it I will not reread it at your request.

I would like to make some comments on it however.

I moved to Issaquah in 1973 from Bellevue and I found there an electromagnetic black hole. Two mountain ranges separate my home from the transmitters in Seattle and I could get no FM radio and no television until we hooked up with the cable. The cable service was very poor with service trucks in the area only on Thursdays. If a problem was not fixed on a given Thursday it was fixed on the next Thursday or not at all.

I have also given to you briefs of the court battles the city of Issaquah has fought with the cable operator.[1] Representative Sanders' memory is a bit short. It was not only the attorney general's opinion but also the Supreme Court of the State of Washington who felt that the city of Issaquah had the right to own and operate a cable television system.

The city of Issaquah never wanted to take away business from a private enterprise. However, private enterprise in the city of Issaquah would not provide good service to the citizens and I think without the leverage that the possibility of municipal ownership gave the city we would not have been able to negotiate a franchise that would bring, and has brought, to the citizens of Issaquah good service at reasonable rates.

I think when you ponder the issue of regulation of cable television, you have to draw a contrast between the city of Seattle and the city of Issaquah. In the city of Seattle, free enterprise may be operating. People do not have to subscribe to cable in the city of Seattle. They can get good television off the air. In Issaquah that isn't true. The only way we have of obtaining access to television for a number of years is by cable. I think as the technology of cable moves into the future, as mentioned earlier by Senator Packwood, that cable will become a communications utility providing a number of services to all of us and I think we should treat it as a utility. It doesn't make sense to have two cables in front of every house. I think the recent decision on A.T. & T., where the long lines department of Bell Tel was deregulated, shows that in areas where competition does exist you can remove regulation. In areas where competition does not exist, such as local telephone service to my home, regulation is appropriate.

I would like also to offer for the record the city of Issaquah ordinance which regulates cable television.

[The statement follows:]

STATEMENT OF M. GRAEBER JORDAN, CHAIRMAN, ISSAQUAH CABLE TELEVISION COMMISSION

Before I address the issue of cable television regulation and ownership, it is important to explain the environment in which the systems operate. It is against this background that we must view the role of government—city, state, and federal—and its relationship to cable television operators.

BACKGROUND

Issaquah is a small community located 17 miles east of Seattle in the foothills of the Cascade Mountain Range. Two mountains lie between Issaquah and the television and FM transmitters in Seattle making direct off-air reception impossible for Issaquah residents. It is a classic application for community antenna television and, for this reason, Issaquah was one of the first communities in Washington to have cable. In the early 1950's, an antenna was erected on nearby Squak Mountain and connected by cable with homes in the valley. The city was served in this manner without a franchise until 1968 when several cable companies petitioned the City Council seeking franchise ordinances which were granted. Within two years and before much capital improvement had been made, the companies changed hands two times ending up under the ownership of one of the nation's largest cable companies.

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[1] The material referred to has been retained in the committee files.

When I moved to Issaquah from Bellevue in 1973, television and FM radio ceased to exist for my family until we hooked up to cable. The pictures and sound were poor, but the choice was between poor quality and nothing. When service was requested of the cable operator, residents were told that there was only one service truck allocated for the Issaquah area on Thursdays. If any of us missed having our problems corrected on a given Thursday, we had to wait until the next week.

The system was operated with the bare minimum of investment or service to the subscribers until 1975, when two rate increases provoked the City Council to review the rates under its authority in the franchise. A hearing board composed of City Council members and a few citizens conducted extensive public hearings to review and investigate the rate increases. It was during these hearings that I first became involved with cable television in Issaquah. The board determined that the increased rates provided a return in excess of a fair rate relative to the company's equity in the Issaquah-related plant equipment. Accordingly, in July, 1976, an ordinance was passed ordering the company to roll-back its rates to the prior level based upon a finding that the old rates would be just, reasonable, adequate, and sufficient to provide a fair rate of return for at least a two-year period. The roll-back was challenged by a writ of certiorari filed in King County in August of 1976.

The time and effort consumed by the Council and its hearing board had been considerable, but in the process of sifting through the complicated issues of a rate hearing, they had gained a better understanding of cable television and the financial wherewithal of a national cable company. Further, the Council was somewhat nonplused over the company's unwillingness to recognize that the Issaquah operation was a highly successful part of their greater Seattle venture given the high subscriber saturation (60 percent) and minimal investment and maintenance expense.

Of equal concern were the future prospects of continued expensive rate hearings and court battles should the City elect to resist each rate increase as it occurs. Even if the City were to prevail in the present court case, it would take several years to do this due to court challenges, and would probably finish just in time for another rate increase.

The alternatives were few:

1. Challenge the company at each rate increase;
2. Concede the "monopolistic" position of the company and let each subscriber decide to pay the rate or have no television at all; or.
3. Replace the franchise with a City-owned and operated system.

The Council formed a Cable Television Committee to closely study the third possibility. I was a member of this committee and later became its chairman. The Council also polled the citizens by circulating a plebiscite with the water and sewer bills, asking whether the residents would favor municipal ownership of the cable television system. There was an excellent response to the questionnaire (52 percent returned) with 82 percent favoring the proposal and 18 percent opposed. A feasibility study was then conducted by the Cable Television Committee to determine whether municipal ownership was within reach from a purely economic point of view. After favorable findings on the financial side, the Council passed an ordinance in February of 1977 authorizing the City to own and operate a cable television system and to terminate the franchise.

The Council also authorized a declaratory judgment action to resolve several legal issues. These include:

1. Whether a noncharter code city possesses sufficient power to own and operate cable television within its corporate limits.
2. Whether municipal ownership of cable television is in contravention of any state law or preempted by the state.

3. Whether the City may lawfully terminate the franchise according to its terms against the grantee's contention that such termination would be an unlawful taking of private property.

4. Whether public versus private ownership of cable television violates the guarantees of freedom of speech under the First Amendment of the United States Constitution.

5. Whether municipal ownership of cable television is inconsistent with Federal Communications Commission rules and regulations.

The case was fought through the courts of the State of Washington, ultimately to the Supreme Court of Washington. The briefs presented to the Supreme Court of the State of Washington and the Court's findings are attached as Appendix A. The arguments on both sides of these issues are germane to the questions that may confront the United States Senate in some future session.

The Supreme Court of the State of Washington upheld the City's right to own and operate a cable televsion system for the benefit of its citizens. Having lost, the company sued for peace and negotiated with the City a new franchise which has resulted in a high quality television and FM radio signals, and fair and reasonable subscriber rates.

OBSERVATIONS

I do not pretend to be an expert in cable television regulation. My experience in this area is confined to the five years I have worked on behalf of myself and my fellow Issaquah citizens to obtain decent cable service at reasonable rates. During this time I have pondered many of the questions which may come before the Senate.

Cable television has come a long way from "community antennas" for cities like Issaquah. Seventeen miles away in Seattle cable companies must provide high quality signals, high quality service, additional channels, and at rates perceived to be fair in order to acquire subscribers. In Seattle simple, inexpensive antennas will provide the viewer with seven television stations and over 19 FM radio stations. Cable operators must provide something over and above what's available free off-the-air to be viable. The free enterprise system may be operating here. But in Issaquah, who keeps the cable operator honest? Without the ability to regulate, citizens of cities like Issaquah are hostage to the cable operators. Our experience is, that the cable operator will "milk" the cash cow for all it's worth. Furthermore, without the possibility of municiple ownership, cities have little leverage when negotiating franchises.

Very few cities own and operate cable systems. Why? I believe it is because cities have enough problems providing services to its citizens without the added burden of a technologically complex service like cable television. In Issaquah, we never wanted to take over cable operation from private enterprise, yet we were fully prepared to do so given the miserable track record of the operator. I firmly believe that our willingness to take on this burden, albeit reluctantly, and to pursue the issue in the courts in what is keeping the operator honest in Issaquah.

Cable companies have made much ado about free enterprise and de-regulation. They have protested franchise fees, rate review boards, and municipal ownership. On the other side of the coin, however, they wish protection from competition in the form of area franchises. In my view, the cable business is comparable to the telephone business. Both are characterized by a large capital investment in a fixed plant. It makes sense to grant franchises in these cases so that we don't waste the capital of this nation in putting two telephone lines or two cable television lines past every house. It also makes sense to regulate companies who have been granted these virtual monopolies.

I have heard the argument that cable companies should not be regulated since television and FM radio reception is not a necessity. Is the telephone? City water? Electricity? Some citizens of Washington by choice get along quite well without any of these conveniences. The majority of us, I think, have based a life style around having access to these services. Cable systems will become more of a necessity as the full potential of this resource is realized, bringing news, printed text, access to data banks of information, shopping by wire, meter reading, fire alarms, and medical alerts to each wired home. It is probably time we recognized cable systems for the utility they really are and treat them as such.

The CHAIRMAN. Representative Sanders, let me ask a question. I think we share the same views about government management and enterprise in general. I'm not sure it's limited to municipal management. I do not find the Federal Government necessarily an expert manager in programs it undertakes but you are suggesting that the Federal Government tell the State of Washington or all the States and the cities that you cannot own a cable station. Is that consistent or should we say that about public utility districts, you cannot own electric generators and distributions?

Mr. **Sanders**. Senator, I am not prepared to answer that question. That is a very complex question. I would rather not.

The **Chairman**. I have mixed feelings about the Federal Government telling the local governments anything. I rather like the idea of our basic block grants and giving money to the cities and saying, here, you know if you need a firehouse or day-care centers better than we do, so on one side I'm saying the city of Vancouver wants to own a municipal franchise or if they chose not to I'm not sure that they should be denied the right to make that mistake, which I think it would be, because that would be their business.

However, let me ask you—well, I want to make sure we're using the term similarly; basic subscriber rates.

Mr. Greif, what does that mean to you, that term?

Mr. **Greif**. That is a significantly difficult question to answer because of the development in the industry of tiered programing. That is, 3 or 4 years ago a subscriber got the much-carried signals, the local broadcast signals and a couple of imported distance signals. That would be it, and then paid an extra fee for a premium service such as Home Box Office or Showtime. Now in fact in a lot of the proposals that are being set forth, basic service may mean up to 40 channels and then all of the other premium services are tiered. I think basic service has to be defined for the specific system that is being regulated.

On the one hand we have what appear to be national firms when you look at the financing and all of that sort of thing and perhaps the sharing of programing. You must remember however, that in most cases the local cable television system is a discrete system that serves one community or a group of communities. The basic rate for that community may be different from a basic rate for another community.

The **Chairman**. I understand that but I want to understand the service. What is the basic service? Is Home Box Office a basic service like championship fights?

Mr. **Greif**. No. Another way of saying it might be that any service that a cable operator must pay a premium for is not a basic service. Those services that are provided to the cable operator without charge might be included in a basic service.

The **Chairman**. Would you agree with that basic definition, Ms. Besserman? You used that term in your testimony. I want to make sure we're talking about the same thing before I go on with my questions.

Ms. **Besserman**. Our basic subscriber rate system. It was established in the competitive bidding process for the franchise and what we are talking about is our need to control—to insure reasonableness on the part of both the city and the operator when it becomes necessary to increase those rates.

The **Chairman**. We're talking about the basic subscriber service. What should it include, the classical music station should come in on your cable or would that be a luxury, additional service for which you could charge a dollar a month.

Ms. Besserman. I cannot answer that off the top of my head. It is in the franchise agreement in our testimony.

The Chairman. A question on the franchise and I'll put this to the people representing the local governments. Do you think there should be any limitation placed on the amount the cities can level on franchises?

Ms. Besserman. What do you mean by franchising?

The Chairman. You send the corporation, the cable corporation, as an annual fee we are going to take x percent of your gross revenues, what we will force you to give us before we give a contract. Should there be any limitation? At the moment FCC does put a limitation on, 3 percent, although you can go to 5 percent if you can prove it's extraordinary circumstances. Should there be that limit?

Ms. Besserman. I find no problem with that.

The Chairman. Mr. Greif?

Mr. Greif. I do not believe there should be a limit. I think that it is a Federal usurpation of local taxing powers and I do not see there to be a vast record of abuse by municipalities of the franchise fee. The industry stated its concern; in these hard times local governments will turn to cable as a way of really rapidly increasing revenue. There may be a few occasional instances where that is found but by and large that is not the case.

The Chairman. You think the cable franchise fees ought to roughly cover the costs of regulating cable or should you be able to use the fees for additional revenue purposes, far above and beyond the need for cable regulations?

Mr. Greif. I feel the fees should be used for cable regulation and the development of local access.

The Chairman. That's fair enough. That's part of the use of the cable. The District of Columbia has not yet granted a regular franchise and they're asking for a franchise fee of one-third of the gross revenues. I don't know if anybody is going to bid on that basis or accept it but that is clearly beyond what is needed for access channels or anything. He wants to use it for general revenue purposes. Should that be allowed?

Mr. Greif. I do not want to put myself in the position of saying what is appropriate for the District of Columbia or anywhere else. I would just simply say that that is certainly something——

Senator Gorton. What is your position or do you think that the District of Columbia should make that decision for itself?

Mr. Greif. That is correct.

Senator Gorton. That is not your position?

Ms. Besserman. I feel that it should be a local decision, however, I can see that there needs to be a reasonable control.

The Chairman. That's what the FCC is trying to do now, it is 3 percent or 5 percent. They tried to say, well, within reason that is all that a city needs to regulate this franchise. If they have reached beyond that they are using it for purposes clearly unconnected with the granting of the franchise or the use of the cable. At the moment that is an administrative decision. It's not statutory.

Ms. **Besserman**. As you all are aware, the cities have so few sources of revenue that when there is a possibility for a minor incremental increase, we do look at it.

Mr. **Sanders**. Local governments, the Association of Washington Cities, is always in Olympia looking for methods of increasing taxes but in 1980, in the State of Washington, the average revenue to the cities in the State of Washington was increased 8 percent. You hear this human cry from local government for wanting more money all the time, however, in my opinion they really do not need this extra money for which they are always asking. I would recommend that the franchise fees be kept to a minimum to cover the administration of the program and not as a source of income.

The **Chairman**. Let me ask you something now. Mr. Hirshfield says that this is not a monopoly. Mr. Greif would say it is a monopoly and I assume you say it's a monopoly because of the wire you're only going to have one wire. Is that correct?

Mr. **Greif**. It's because of what that one wire does.

The **Chairman**. For most people, I think for a great period of time they are going to use cable television to receive entertainment and I'll be very surprised if any of them are interested in two-way communications if they can use their telephone wire for two-way communication, I mean voice and ordering groceries or doing banking. I do not think cable, as far as the average resident, is going to move far in that direction. I also do not think we are very far away, as I indicated in my opening statement, from direct broadcast satellite television. I'm not sure I would get into the cable business very far at the moment if I were investing because I think only 10 or 20 years away at the outside most homes are going to receive their entertainment signals directly through the air although there will be some kind of a scrambling device that they may rent in order to unscramble the signal and I am sure that the Radio Shacks of the world will be selling devices to beat the scrambler. But that's not your problem or mine. But you will pay a fee to get a scrambler that sits in your house and unscrambles the signals but there will be no wires.

Under those circumstances would cities have the right to regulate?

Mr. **Greif**. One question that you have put forth is to be answered in the future because what you are talking about is what all of this is going to look like 10 or 15 or 20 years from now. The answer at that time may in fact be no, that the only thing the cities would regulate is the way the wire is attached to the pole. But Senator, I would submit that today the cable is, if you talk to any person who calls my office during the week out of absolute frustration and says, "Give me some help," the cable is a monopoly because it is the only wire running down the street that brings everything from pay services to the access channel or whatever. I would venture to say that in fact will be the case for the next 10 years.

My response is that because cable, in the majority of the systems that are constructed now in the majority of the big cities across the country, is a de facto monopoly, we need the tools——

The **Chairman**. It's not the only method of getting news. There are all kinds of ways of getting news other than cable.

Mr. **Greif**. It's the only way of getting 24-hour-a-day news on television.

The **Chairman**. Maybe in some stations in some cities but that is not uniformly true but it's not the only way of getting news. It's not the only way of getting movies in your home I mean.

What is the unique monopoly? What does it deliver that there isn't some other competitive way of getting roughly the same thing?

Mr. **Greif**. It is the one service that brings all of those in one package and that is what makes cable unique, the fact that cable is the only technology in service today that brings all of those various choices to our house in one bundle package.

The **Chairman**. But monopoly connotes that there is no other way of getting any other competitive service. Your electric light, the only way you're going to get electricity is off your electric light. The only way you get a telephone, although this will be changing soon, is off your telephone line. But cable is not a monopoly in the sense of the only way of getting, the only way of getting most of the things that people get in their homes.

Mr. **Greif**. I would submit that in many cities in the country the only way that you can get commercial free movies at home is cable. The MDS operator in our community is shielded by one of the hills in Seattle and we cannot get movies in any way other than cable. We cannot get CNN and ESPN and those various kinds of services that might be available some day by direct broadcast satellite. The only way we can get it in our neighborhood now is by cable.

The **Chairman**. All right, I have a note here. Comsat in 1985 will start their service in the eastern zone first but we are not very far from those signals coming into the home, and they will be as clear as cable coming into the home, and at that stage you will have clear competition to cable and probably infinitely cheaper facilities because the line of that wire is not an inexpensive outlet. You want unlimited franchise fees and Ms. Besserman would accept some reasonable limitation but apart from that, what other than the franchise fee limitation did you object to in Senator Cannon's compromise? I need to know this seriously because we're going to hearings again and I want to know, other than that what it was you didn't like?

Mr. **Greif**. Are you asking that of me? As the Seattle cable officer I hesitate to respond.

The **Chairman**. I'm asking for your position as national president of the association because they are quite opposed to even those last positions and I want to know, as we go through writing them again, what it is that they didn't want? What was in that last compromise?

Mr. **Greif**. It was the National League of Cities that was opposed. I would like to say that I would not feel it appropriate for me to respond on behalf of the National League of Cities at this time. That was a position taken by the National League of Cities after a long discussion with the Cable Television Task Force and the officers of that particular organization and I certainly do not represent that organization.

The **Chairman**. Let me go through the parts of it, and then you tell me what you would add or don't like.

One, we left the cities the right to regulate basic cable television subscriber rates, and I ask you what you meant by that definition, and two, we left the right of municipal ownership. We left the requirement of access channels if you wanted to have them and we grandfathered all the present franchises so that anyone who had a franchise now or any city was relying on what they had, they wouldn't lose it.

The pole attachment laws—basically we kept the same law we have now. Really the only issue involved, involved some of the rural electric and telephone companies, and the principal issue did not involve the National League of Cities. And so as we go into this next time, other than the franchise fee where you would clearly disagree with what we had because we kept the Federal Communication Commission's limitations, what do you want in national cable legislation other than what we had in that last compromise or in addition to it? Now here I'm asking you personally.

Mr. GREIF. I have not read all of those to see exactly what is included but the way you have proposed them it would sound to me as though they maintain the status quo. The only thing I might add is that I personally believe it is imperative that some system be developed to insure that at least a portion of the channels are made available on a leased-access standard.

The CHAIRMAN. Anything that we didn't prohibit the cities, they kept. Slade has asked me to go through it again, the last compromise that we voted on. This was the one on Senator Goldwater's motion to remove all the cable provisions from the bill. One, the cities could continue to regulate basic television subscriber rates unilaterally and two, you could require public access channels and allocations. The franchise fee we kept the same, we made it statutory but we kept the same FCC rules they have now, the 3 percent and the 5 percent. That's where you disagree and Ms. Besserman said she could live with it, and that was the only issue.

The pole attachment laws we kept as they were. There was a grandfather clause, just grandfather everybody and so nobody's present rights, municipal or ownership, were changed. On ownership we said nothing about municipal ownership; therefore we didn't prohibit it and you could have it and that was basically the last compromise.

Ms. BESSERMAN. Senator, if I may, I would like to add something here that I think responds to your question. You asked before what do the cities not have by way of communication. Each city is unique. It would be a sin to remove from the cities the ability to fill in whatever communication gap exists in each particular situation.

The CHAIRMAN. That's what I'm getting at, apart from whatever limitations were in this bill, we removed no power from the cities and Representative Sanders wouldn't have gotten what he wanted. We didn't prohibit municipal ownership, we didn't prohibit the city's right-of-way regulation. We didn't prohibit access channels. Anything that you and the cable company wanted to enter into in terms of a contract at the time of the franchise, anything was permitted and the one limitation was on franchise. We did keep that limitation of the franchise fee.

Some people would say that cable companies should not be allowed to initiate at all, simply be the carrier and all others will initiate programs and lease their lines. That was, in the scale of the dispute, one of the lower level issues, but it was an issue.

I want to make sure and go through this again. I thought we had a compromise with the National League of Cities but it fell apart for reasons I am not sure. They never thought we had a compromise, they say now, but I thought we did. When it was all over I said to the officers of the National League of Cities, "Now what was in the last compromise that you do not want if we go through these hearings again?" What I sensed was more a question of pride, than substance. We had no hearings on cable television last year or this year, although we had several years of hearings and because some of these provisions had been put in without hearings, the National League of Cities took a position against them.

Now, I am trying to get down to the substance of what they want, I couldn't get much. That is why I want to make very sure when we finish the hearing that, especially from you and Mr. Greif, just what it is you don't want in the bill. He doesn't want a limitation on franchise fees. The rest of the things he would have accepted in the bill.

Ms. BESSERMAN. I can't speak for every city in the United States. You know, in Vancouver we're a part of a major media market in another State. We get what they choose to send out. We feel that cable gives us an opportunity for a link to our own State. That is our own unique situation. There may be other situations in other places. We would not like to lose this opportunity, as a local medium would give us some choices.

Senator GORTON. We want an enforceable method to see to it that whatever cable serves your community is more oriented to the State of Washington.

Ms. BESSERMAN. Oriented to what we need. We do not get, or cannot get the news from Olympia and Seattle now, that we would like to get. This offers us an opportunity to fulfill our unique need. Now I would just submit there are other cities that are also in unique situations that don't want to lose the option of getting for their citizens this new opportunity.

Senator GORTON. Mr. Jordan, do I understand your testimony to have been the city of Issaquah went through this extended dispute with a private cable company, voted in favor of public ownership, then when it succeeded in establishing its right to do so in the State supreme court the city did not, in fact, go into the cable television business but used it as a leverage to get better and more reasonable service from the franchise?

Mr. JORDAN. That's what happened.

Senator GORTON. The city of Issaquah is not in the cable television business?

Mr. JORDAN. No.

The CHAIRMAN. Did you get better service?

Mr. JORDAN. Yes.

Senator GORTON. On that basis is it your view that the city of Issaquah should not have had that leverage?

Mr. SANDERS. Absolutely, that is the wrong way to go about solving disputes between public government and private business, by threatening to take over the business.

Senator GORTON. Had your bill been in effect in 1977 or 1978, would Issaquah have the quality of television that it gets now?

Mr. Sanders. I believe they would have, absolutely. The people in the area that were not getting good television reception would have continued to request the company that provided it for better service, and sooner or later, perhaps not overnight, they would have received better service.

Senator Gorton. Is it your view that the city of Issaquah should be able to control charges to individual subscribers?

Mr. Sanders. The regulation I would rather leave to the local government, yes.

Senator Gorton. Would it be safe to say that had Governor Spellman signed the bill that you sponsored you would not be here today, with this problem in this connection?

Mr. Sanders. Yes, I think that would be safe to say, although I could have brought the example to you, and as I did in my opening remarks, say that you have an opportunity to prohibit that sort of practice throughout the United States.

Senator Gorton. That anticipated my next question.

Do you feel, given your political philosophy, that where a State obviously has a control of the activities of its municipal governments, that the United States should make that decision, should intervene in that decisionmaking process, or limit the powers of municipalities as to what they consider to be an important service?

Mr. Sanders. If local governments cannot stand up to their responsibilities and misuse their rights, then I believe that problem should be elevated to the next higher level of government.

Senator Gorton. Which is the State?

Mr. Sanders. Which is the State, but in this case why I am concerned is that the State did not step up to its responsibility and prohibit local government from taking over a private business. Therefore, I am here asking that this issue be elevated to the next level of government, which is the Federal Government.

Senator Gorton. So it would be quite appropriate for the Federal Government to prohibit municipal ownership of electric utilities; would it not? That was a major issue in this State for 20 years.

Mr. Sanders. I would prefer not to get into the electric utilities question.

Senator Gorton. What's the difference?

Mr. Sanders. I have not studied that issue as much as I have this one.

Senator Gorton. Or the water supply, is that inappropriate, do you feel, for municipal ownership?

Mr. Sanders. I prefer not to get into other subjects other than the cable TV subject.

Senator Gorton. Mr. Hirshfield, you really haven't had much of an opportunity to answer questions this morning.

I suppose I would like to put to you the opposite side of the coin of the questions put to Mr. Greif. You take the position that cable television is not in fact a monopoly but first, is it not true that only a tiny handful of communities in—and neighborhoods with more than one cable system is available to subscribers on a competitive basis?

Mr. Hirshfield. I think that's a statement of fact. There are a couple of things floating around here; first, I think we sometimes tend to confuse the product or service that might be monopolized with the method of distributing it and cable TV is just one of a number of methods of distributing it.

Senator GORTON. I understand that. That is your position and it certainly was the thrust of the questions to Senator Packwood but nonetheless as a fact there are very few subscribers who have a choice of more than one cable television system. Is that not correct?

Mr. HIRSHFIELD. Yes and I would suggest there are probably two reasons why that is so. One is that until the advent of satellite distribution of satellite networks other than broadcasting signals, it was generally difficult for more than one cable system to succeed economically in a community. Out of that economic fact of life years go arose a preconception, I think, that this is true in today's environment perhaps might be true in tomorrow's environment. This has encouraged municipalities to say, well, is there is going to be only one then we will only have one, and we will make the choice. As I said earlier this then gets you into the monopoly argument. But who has created the monopoly?

Senator GORTON. Is there a statute or something we can do on a national level to restricting the rights of local governments which would encourage competition among cable television systems to the same customers?

Mr. HIRSHFIELD. My comments here today were directed at the major abuses that have arisen out of the present system as it's operated and I think that's what the cable TV provisions of S. 898 were addressing. I really haven't looked at my crystal ball and tried to conceive of a new order of things.

Senator GORTON. If we passed everything that was in S. 898 would you expect there to be more competition between cable television systems with the same customers?

Mr. HIRSHFIELD. Not particularly. I think those provisions simply address the abuses that arose out of this anticompetitive environment that we are operating in.

Senator GORTON. Would you expect prices for individual consumers and customers to be higher or lower if those provisions of S. 898 were passed?

Mr. HIRSHFIELD. We have eight cable franchises of which seven have no rate regulation. The prices in those systems are generally lower than the systems that have regulation. The reason for this is that once you know you've got to go and fight a war you spend a lot of time and effort to get a rate increase, you go for everything you can get. If you can simply deal with your customers in the marketplace you worry more about your customers and try to do what's reasonable.

Senator GORTON. Ms. Besserman, if the provisions of S. 898 had been in effect at the time when you were going through the franchising process how would it have been disabled in connection with Vancouver and Clark County? What good elements would you have in your franchise if it were granted that you think you would not have been able to secure with those provisions?

Ms. BESSERMAN. I don't know. We had wonderful applicants who responded to our requests for proposals and the effect of those provisions—I would suppose—well, we got competitive proposals and I would assume that if some elements were not required, the offers would have been keyed to those provisions.

Senator GORTON. If all the provisions in S. 898 had been passed presumably there would just have been as many companies interested in cable to Vancouver, would there not?

Ms. BESSERMAN. I can't say.

Mr. JORDAN. I don't see anything obnoxious about the provisions.

Senator GORTON. I'm talking about before the compromise positions. The original bill, as reported from the committee, with all of its very significant restrictions on local controls, how would have that adversely impacted the city of Vancouver in the processes you described?

Ms. BESSERMAN. With respect to all of our proposals they did indeed exceed our requirements.

Senator GORTON. Could you answer that question from the point of view of the average community which is going into cable television, perhaps, for the first time?

Mr. GREIF. The great concern was that if the cable provisions had remained in the bill and in fact become law, that municipality would not be able to secure access channels, rate control and that sort of thing. You must remember that many municipalities need leverage to make sure that the cable operators coming into town indeed lives up to their promises. While the promises continue to be made by the industry the grave concern is that with those provisions there is no way for the municipality to insure that promises made would in fact be promises kept. There also was some interpretation that the bill would have made null and void those franchise agreements granted across the country in the last 3 or 4 years which included significant provisions for the community.

Senator GORTON. Mr. Hirshfield, assuming that the original form of S. 898 had passed and assuming that Representative Sanders had succeeded in the State of Washington, succeeded in his bill, how would the city of Issaquah ever have solved its problems?

Mr. HIRSHFIELD. I live about 5 miles from the city of Issaquah and have for about 12 years. I drive through there now and then and I was aware of their problems. I would have loved, as a cable operator, to have the opportunity to build a cable system there. That's an opportunity that was never afforded me.

Senator GORTON. Would you build one in competition with the present franchise?

Mr. HIRSHFIELD. I think I'd have to qualify my answer, depending on the circumstances at the time but I certainly would have invested time and effort into investigating it and perhaps have done so.

Senator GORTON. That was at least a possible alternative?

Mr. HIRSHFIELD. Given the situation it wasn't worth investing any time or effort investigating it.

Senator GORTON. What do you mean, "Given the situation"? Why didn't you go in and look into that with all these problems they had?

Mr. HIRSHFIELD. Because it was my perception, which may be incorrect, but I think it's correct on my part, that when a city has a single franchise they will deal with that franchise. If you come in as a second franchisee and request something they may even use you, in this case me, as leverage on the first person but they don't seriously intend to let you get into competition with them. Thus if I come into a situation like that I get egg on my face, make some enemies in the business and really don't get anywhere. That's sort of the facts of life.

Senator GORTON. Mr. Jordan, is that a correct perception? Did you attempt—the city of Issaquah, attempt to get anyone else to come in?

Mr. JORDAN. The ordinance that the operator was operating under contained a provision that allowed the city to purchase or condemn for the use of the city itself all property of the grantee within public streets and ways and for fair and just value, et cetera, for the use of the city itself.

Our attorneys advised us that this did not allow us to open the gates to two other cable operators for competitive bids. The only alternative we saw in the city was either to let each subscriber decide whether to pay the rate and get poor service or elect no TV at all or to invoke the position of this ordinance and operate the system as a city-owned cable system.

Senator GORTON. One last question for Mr. Hirshfield.

It seems to me that almost a universal view of cable television franchise operators, the franchise fees should be used primarily, if not exclusively, simply for the cost of regulation and not in order to produce any income for municipalities. Why is that the case? The initial corporation surcharge of the utilities, taxes, the general municipal purposes, policing them and the like, but what conceptionally is wrong with charging the cable television franchisee a rather substantial fee within the political system, the general municipal system?

Mr. HIRSHFIELD. I think the concern is not with a fee that would generate moneys for the municipality to use, but with a fee that would tax cable systems disproportionately to other businesses and particularly disproportionately to other methods of competition.

If you have a movie theater that is paying 1 percent B. & O. tax and a cable TV station that is paying a 6-percent franchise tax, plus the 1 percent B. & O. tax [that occurs here in Seattle], that's the situation that bothers us. It's a disproportionate——

Senator GORTON. So it isn't actually the use of the franchise but it's the system under which the competitor is not being charged—the competitor is being charged far less than you are?

Mr. HIRSHFIELD. Yes.

Senator GORTON. Is that an unreasonable position, Mr. Greif?

Mr. GREIF. I don't believe so.

Senator GORTON. I believe that's all of my questions.

The CHAIRMAN. In the next panel Mr. Brock from Bellingham will testify that he couldn't get anyone to bid. Are you familiar with that problem?

Mr. HIRSHFIELD. Somewhat familiar but I know they did go out to bid and I know one or two companies did spend significant time looking into that. But going out to bid, maybe it's part of the same process we discussed before. They are saying: "Do you want to be the next future guy that's going to have the same kind of a deal that we've given to this fellow that's here?"; and maybe that influenced the bidders. I think if the city really wanted competition they would print up 10 or 20 franchises and mail them out and say accept it.

The **Chairman**. Thank you. Thank you very much, we appreciate it.

Senator **Gorton**. Thank you. It's been most enlightening.

The **Chairman**. Also we have today with us Congressman Joel Pritchard. Do you have any comments?

Congressman **Pritchard**. No, thank you, this is just fine.

The **Chairman**. We next have Hon. Betty Edmondson and Mr. John Goddard and Susie Porter and Don Mackin and Patrick Brock.

Senator **Gorton**. Let me say for the record that the provisions of Senator Cannon's compromise are a matter of record and have been well described by Senator Packwood here today.

I would ask the witnesses to speak right into the microphone. The sound system is good but it 's very directional and backing up here—now we'll follow the same procedure we did before through the entire panel. We'll start with Betty Edmondson, who is mayor of Yakima.

STATEMENTS OF HON. BETTY L. EDMONDSON, MAYOR, CITY OF YAKIMA; JOHN GODDARD, PRESIDENT, VIACOM CABLEVISION; SUSIE PORTER, WASHINGTON PUBLIC UTILITY DISTRICTS' ASSOCIATION; DON MACKIN, MANAGER, PULLMAN TV CABLE CO., AND PATRICK BROCK, CITY ATTORNEY, CITY OF BELLINGHAM

Ms. **Edmondson**. Good morning, Senator Packwood. Thank you for this opportunity to testify for you on cable television, its effects on local governments. We very much appreciate the time you have provided on this most important issue.

The city of Yakima granted, by vote of the electorate, a cable franchise in November of 1978. The city charter provides that any franchise granted must be passed by a vote of the people. Two years later we also granted a second franchise to Yakima Valley Cablevision—that's a subsidiary of McCaw Communications—strictly for the several newly annexed areas of the city. The first franchise that went to the vote of the people, there were five companies that bid for this franchise. On the second one 2 years later for the several newly annexed areas, there was just one bid.

Both cable companies endorse the city's application to obtain a waiver from FCC to levy a 5-percent franchise fee instead of the standard 3 percent. None of the franchise moneys were used for general fund purposes. Three percent is allocated to support the regulation and the monitoring of the cable franchise and 2 percent supports the community access program schedule. Right now we have 10 members on our Community Programing Advisory Committee to provide a local community-based access to permit the citizens to actively participate in the development of local cable television programing.

Television is a major element in public affairs. Television and telecommunications are destined to have an even more profound effect on our economy, our politics, our attitudes, our lives, and our society than they do now.

Television is a very serious business. The removal of the city's authority to regulate rate increases takes away their ability to protect the consumer from unfair rate increases. Second, city and cable companies should be allowed to continue to negotiate franchise fees. Those fees are used to help reimburse cities for direct franchise costs as well as pay for the monitoring of the cable company's performance in any of the various communities. These costs have never been a burden to the cable companies in the past and it's always been paid for as a part of the company's obligation to the community and its citizens.

Once a franchise has been awarded, and the contract has been agreed upon, sometimes there is a little motivation for the cable companies to maintain an on-going interest. Yet, one of the distinguishing characteristics on which companies are judged is their stated objectives to provide a first-class operation and at a reasonable price and access capabilities.

Cable TV's full potential as a comprehensive communication system is just starting to be realized and of course Senator Packwood referred to that earlier when the current regulatory structure started in the 1930's; it needs to be constantly reviewed, and when necessary updated. We find, as the rapid rate of technological advances they make great changes in the structure of the industry itself. It is really awesome, it seems to happen overnight, therefore franchising and basic regulations belongs at the local level where local officials understand and note the needs, the varying needs, the different needs of their communities and these should not be preempted by the Federal Government.

Once a cable company is contracted for an almost, sometimes, an exclusive franchise, the only restriction on its operation is the contract with the local government. This annual or perennial seeking by the national cable associations on deregulations is actually pursuing an unrestricted monopoly.

This giant new industry is difficult to characterize. Everyone is trying to say it's a utility or it is or it isn't and under the existing communications Law we don't seem to have a category. Ownership concentration is an on-going problem in the cable industry; as national conglomerates rapidly assume a dominant role in the cable industry, the need for strong local control becomes even greater.

I urge Congress not to limit the local control by barring rate reductions—programing requirements, or public ownership, especially at this crucial time in the development of the industry.

What the Federal Government can do—we need a statutory regulation supporting a strong local role in regulating cable television based on: One, cable's quasi-monopolistic nature; two, the right of local governments to regulate the use of their public right-of-ways; and three, the public nature of the services which cable can provide. Federal law should clearly define the authority of Federal, State, and local governments to regulate cable television.

Federal law should grant State and local governments dual authority; general authority to regulate cable television and exclusive authority to regulate consumer cable rates.

The FCC should have concurrent authority to regulate in those areas not specifically and exclusively delegated to local governments.

Under this authority the FCC could oversee the exercise of the local government's general authority to regulate cable TV. The FCC could intervene if the State or the local governments were excessive in their regulations and the Federal Communications Commission should have broad policy authority but nothing that would usurp the local control because the local control is essential to assure quality cable service.

We oppose any Federal action which fails to recognize the essential role the cities must play in protecting the local public interest as it relates to cable television.

We also oppose any Federal action which fails to recognize that in the regulation of cable systems the cities are operating in their true governmental capacity.

Thank you.

[The statement follows:]

STATEMENT OF HON. BETTY L. EDMONDSON, MAYOR, CITY OF YAKIMA

Thank you for the opportunity to testify before you on the subject of cable television deregulation and its effects on local governments. We very much appreciate the time you have provided to hear all sides of this important issue.

The City of Yakima granted its first Cable TV franchise in 1978 (Cox Cablevision), followed by the granting of a second franchise in 1980 (Yakima Valley Cablevision) in several newly annexed areas of the City. Our recent experience with cable franchising proves to us that there is a need for continued, if not expanded, regulation of cable companies by both the FCC and local governments. As evidence to this, let me briefly outline our local cable situation and the importance of cable regulation to it.

FRANCHISE FEE LIMITS

Cable companies argue that without a check on franchise fees local governments may be tempted to solve their revenue problems by levying heavy, discriminatory franchise fees on them. In Yakima and most communities, this has not been the case.

In the Yakima franchises, both companies supported the City's efforts to obtain a waiver from the FCC to levy a 5 percent franchise fee instead of the standard 3 percent. None of these franchise monies can be used for general fund purposes. Instead, they have been allocated to support regulation of the cable franchises and a vigorous community access programming schedule.

This approach by Yakima and other communities is commendable since it provides a true public service and guarantees that the local community will be represented on the cable system.

In most other cases, franchise fees are also used to help reimburse cities for direct franchise costs as well as to pay for the monitoring of cable company performance in a community. If local governments continue to negotiate franchise fees with cable companies, with final approval by the FCC, what could be more fair to both parties. Further limiting the ability of local governments to recoup costs for cable franchising and regulation would additionally burden local government general revenues. Each local government should be able to determine the costs associated with cable franchising and to assess those accordingly.

CABLE RATE REGULATION

The franchises granted by the City of Yakima stipulate that the Council can regulate cable subscriber rates "if they deem it necessary." The Council has yet to enact this provision because rate increases (we have had only one to date) have been reasonable. If the rate regulation provision was not in the franchise, or this power was taken away by Congress, would our rates still be reasonable? We feel that the ability to regulate rates on a local level does help to curb excessive increases and in turn benefits the public.

One additional issue in the City of Yakima, and some other cities, is the fact that the City Charter requires that all franchises be put to a vote of the people. This places an additional responsibility on our local government to ensure that the citizens receive satisfactory cable service. Since the citizens of Yakima decided to allow cable in their City, shouldn't those same citizens receive some protection of their rights through local control of rates and fees?

The NCTA contends that rate regulation is necessary only in those areas where no "adequate competition" exists. Yet, they fail to point out that cable television has many of the characteristics of a monopoly. To provide cable service, the franchisee must make substantial capital investments. Once the operator obtains a franchise, he has the power to control the market for that geographic area. Should a competitor attempt to obtain a franchise, the franchisee has the capacity to drop his rates temporarily and to thus keep competitors out of an area.

Clearly, the public has a strong interest in cable television because it provides public services and uses the public rights of way to gain access to subscribers' homes. State and local governments must retain their role of protecting the public interest through rate regulation until similar services (like subscription TV and direct satellite broadcasts) become price competitive enough to provide genuine competition.

Experts predict that by 1995, over 80 percent of all Americans will receive their television signal from cable. In just over ten years most citizens will be in the position of either paying what a company dictates for service or doing without television. Without rate regulation on a local level, who will control the costs of this vital service to the public? Cable television is a unique product and should be treated as such.

WHAT FEDERAL GOVERNMENT CAN DO

There is a need for statutory recognition of a strong local role in regulating cable television based on cable's quasi-monopolistic nature, the right of local governments to regulate the use of their streets, and the public nature of the services which cable can provide. Federal law should clearly define the authority of Federal, Stat and local governments to regulate cable television.

1. Federal law should grant State and local governments dual authority: general authority to regulate cable television and exclusive authority to regulate consumer cable rates.
2. The FCC should have concurrent authority to regulate in those areas not specifically and exclusively delegated to local governments.

Under this authority the FCC could oversee the exercise of the local government's general authority to regulate cable television. The FCC could be an appeal body when State and local governments are excessive in their regulation.

The enactment of this type of legislation would put the regulation of cable television where it belongs, with the local authorities who originally granted the franchise. Not with cable companies who are interested in profit first and public good second.

Thank you again for the opportunity to speak to you about this issue.

The CHAIRMAN. It will be part of the record. Thank you very much. Mr. Goddard?

Mr. GODDARD. Thank you.

My name is John Goddard and I am president of Viacom Cable, the eighth largest multiple system cable operator in the United States. Viacom has 520,000 subscribers, including 116,000 subscribers in Washington and Oregon. I have been involved in the cable television industry in a full-time capacity for the last 16 years, and I am currently an NCTA director.

My testimony here today will focus on question D, Should the Federal pole attachment law be broadened to include poles owned by cooperatively organized telephone and power utilities and Government-owned utilities? The answer to this question is an unequivocal yes. My testimony is based on my extensive experience dealing with the Snohomish PUD and my observations on recent actions of other PUD's in the State of Washington.

In the mid-1970's, Viacom and Liberty Communications challenged an arbitrary and capricious 67 percent rate increase in the Snohomish PUD through the Washington State judicial system all the way through an adverse Supreme Court decision.

The Snohomish PUD, a Washington public utility district, is a special purpose, municipal corporation organized pursuant to Washington State law (RCW 54.04.010). The Snohomish PUD claimed, on the other hand, to be exempt from rules generally applied to similarly situated private parties such as the antitrust laws and certain common-law contract and landlord-tenant principles. On the other hand, the district ignored rules traditionally applicable to municipality owned public utilities under the theory that it is a unique type of municipal corporation. The outcome of this litigation was that the State Supreme Court ruled that no court review of the Snohomish PUD's actions was applicable on either a reasonableness standard or an arbitrary and capriciousness standard. With this favorable ruling, they were able to continue to abuse their monopoly powers and collect the rate increase, because under Washington State law these municipal corporations are not accountable or subject to judicial review of their actions.

I think it would be worthwhile to amplify on how these PUD's gain this monopoly power. These entities own outright or control through joint ownership with private utilities, all the existing pole space in question. This pole space is necessary for the cable operator to construct his plant. As a practical matter, most cable television franchises prohibit, for esthetic and environmental reasons, the cable operator from setting his own poles except in special situations where prior approval must be obtained. Furthermore, the cost of constructing a duplicate set of aerial pole facilities or placing all of our facilities underground, would be financially infeasible.

Simply stated, there is no practical or economically feasible distribution alternative to the use of existing poles for CATV companies. In essence, the relationship between the PUD's and the cable television companies involves a monopolistic supplier and a captive buyer. And it is perhaps significant in this regard to observe that when we were litigating the unreasonable pole rate increase, the Snohomish PUD made no move of its own to terminate the relationship and force us to vacate their poles. As with any similarly situated monopolist, there was no advantage to the Snohomish PUD in putting us out of business—only increasing their revenue through monopoly pricing.

Thus far, my comments have been directed to the ability of publicly owned utilities to abuse their monopoly powers and raise their pole rates arbitrarily and capriciously. I would now like to give you specific examples of the rates of private and public utilities.

First, I will recap the current rates of several private utilities. Pacific Northwest Bell, $2.50 per pole per year; General Telephone & Telegraph, $3 per pole per year; Puget Sound Power & Light, $3.50 per pole per year; Portland General Electric, $2.63 to $3.50; and Pacific Power & Light, $2.50.

These rates should be contrasted with the rates charged by publicly owned utilities. The Snohomish PUD, $6 per pole per year; Seattle City Light, $5 per pole per year; Gray's Harbor PUD, $7.37 effective July 1, 1982; and Cowlitz County PUD, $7.11.

One can quickly see that the rates charged by the public utilities are over 100 percent higher than those charged by the private utilities. This seems particularly incongruous when one considers the fact that the public companies have lower operating costs than the private companies. Over the years, a generally accepted method of computing pole rates has evolved. This method is found in the current Federal act and many of the State acts regulating pole rates. This methodology includes three factors: (1) historical cost; (2) annual operating cost as a percentage of the historical cost; and (3) percentage of the usable space on the pole allocated to cable.

Factors one and three are relatively consistent between the private and public sectors; however, factor two, the operating cost, decidedly favors public power. These operating costs are less because public power has no profit element, has a lower interest charge on its debt and finally, pays lower State, Federal, and property taxes than private companies. These factors would indicate that, if anything, publicly owned companies should have lower pole rates than privately owned companies.

There are several other factors which the committee ought to consider. First, you must take notice of the coincidence of recent rate increases by the municipal power companies and the problems these municipal power companies are having with nuclear power. Second, they tend to handle the administration of such increases in an unprofessional business manner. Without regard to the validity of these increases, they are often presented to the cable company in a highhanded and untimely fashion. Cable companies often receive little advance notice, and therefore cannot adequately budget for this increase in costs, nor can they recover these uncontrollable fixed costs through rate increases in their rates on a timely basis from the cities that regulate them. Finally, and probably most importantly, these publicly owned companies have been guilty of denying access to cable companies so that they could expand their service area. This happened in our case where the construction of the town of Mountlake Terrace was delayed for several years during the course of litigation. Here, the public interest was frustrated.

I believe that I have clearly demonstrated that many publicly owned power companies have abused their monopoly power in both pole ownership and their unique, unchallengeable legal standing and subsequently have extracted monopoly prices from the cable television industry. Because of this demonstrated abuse, I believe that all cooperative telcos, power companies, and government-owned utilities, including PUD's in the State of Washington, should be brought under the Federal Pole Act to provide the cable television industry a vehicle for terminating these abuses.

Thank you for this opportunity to appear before you and I will be happy to answer any questions you may have at the appropriate time.

[The statement follows:]

STATEMENT OF JOHN GODDARD, PRESIDENT, VIACOM CABLEVISION

Chairman Packwood, Senator Gorton, fellow panelists, ladies and gentlemen: My name is John Goddard, and I am President of Viacom Cable, the eighth largest multiple system cable operator in the United States. Viacom has 520,000 subscribers, including 116,000 subscribers in Washington and Oregon. I have been involved in the cable television industry in a full-time capacity for the last sixteen years, and I am currently an NCTA Director.

At the outset, I want you to know how pleased I am that you have convened this hearing. Although we were disappointed when the cable television provisions of S. 898 were deleted from the bill on the Senate floor, your presence here today demonstrates that the Senate Commerce Committee will keep its commitment to hold prompt hearings on separate cable television legislation. We will do our part to assist you in this process of seeing that the American people are well served by the merging new telecommunications technology.

Because I am being joined by two of my able colleagues in the cable television business today—Jim Hirshfield of Summit Communications of Bellevue, Washington and also a member of the NCTA Board of Directors, and Don Mackin, a cable system operator in Pullman, Washington and Moscow, Idaho—I will not attempt to cover the entire waterfront by myself. I would, however, like to talk generally about the appropriate role of municipal governments in development and operation of cable television systems as I see it, then spend a few minutes addressing one particular aspect of the problem—namely, the issue of whether publicly and cooperatively owned utilities should be made subject to the federal pole attachment law. As part of our division of labor, Jim and Don will discuss other aspects of the increasingly difficult relationship between municipal governments and cable television operators.

This hearing is being held at a time when a national concensus has emerged behind a policy of de-regulation—or "unregulation" as the new FCC Chairman, Mark Fowler, likes to say. While symbolized by the election of Ronald Reagan, this process had begun under the Carter Administration, and now enjoys wide, bi-partisan support. Given the growing and legitimate concern over the decline of America's competitive position in the world, I believe this commitment to deregulation is both healthy and long-overdue. Murray Weidenbaum, currently Chairman of the President's Council of Economic Advisors and leading authority on the economic impact of regulation, once estimated that governmental regulations were costing American businesses over $250 billion a year. That is a cost we clearly can no longer afford in this country if we wish to rebuild our economy and provide a decent and humane level of human services to our citizens most in need.

But I need not tell you gentlemen. The efforts of the Senate Commerce Committee in 1981—in S. 898 and in the broadcast licensing deregulation contained in the Senate version of the Omnibus Reconciliation bill—amply proves that you are among the leaders of this national concensus.

The concern I would like to share with you is that what we as a country are doing with one hand, we may be un-doing with the other. While increased state and local responsibility may be beneficial in the administration of certain domestic spending programs, I believe it is counter-productive to replace a single set of federal regulations—however burdensome and however costly—with a myriad of confusing, contradictory and unnecessary local government regulations. Yet I fear just such a situation is developing in the cable television field. Let me explain.

The communications committees of the Congress, the FCC, and most recently the Justice Departmet in the AT&T settlement, are all moving—albeit at different speeds, and in different ways—towards deregulation of the telecommunications industry. Government regulation cannot keep pace with the enormous technological advances which are occurring almost daily, and the American people will best be served by a vigorous, competitive marketplace. As one—and only one—of those competitors, the cable industry is ready and willing to compete, but we need to do so on an even footing with all other competitors, including everyone from AT&T down to a new VHS drop-in. The current climate of municipal over-regulation threatens to severely handicap the cable industry because it is a regulatory burden only cable operators must bear.

The first and foremost question which you and your colleagues must address before marking up any legislation is this: what is the appropriate role of municipal governments in telecommunications policy in general, and with respect to cable television in particular? This includes not only municipal regulation of cable, but the whole concept of muncipal ownership as well. In short, where do the legitimate concerns of local government end, and where do they start to become contrary to national telecommunications policy?

Local governments defend an activist, regualtory role in cable television on two grounds: (1) that cable systems must use public rights of way and must therefore answer to the public; and (2) that cable is a public utility-type monopoly which must be regulated to protect the consumer. Let's examine these justifications:

First, cable systems do indeed use public rights of way in order to physically bring the cable to the residents of a city. As the guardian of these rights of way, a city government has every right to demand that a cable system do a number of things, to wit:

1. Ensure that use of the rights of way will not endanger the health and safety of the citizens;

2. Require the primary use of those rights of way not be hindered any more than necessary (that is, if we dig up a street to bury a cable, we do it quickly with a little disruption to traffic flow as possible and we return it to its original condition); and

3. That the cable system pay its fair share of the cost of those rights of way as well as for their future maintenance.

I do not believe that the public rights of way justification should extend beyond issues like this. Virtually every private business uses the public rights of way—city streets—and yet the cities make no claims that this fact gives them the right to regulate what services these businesses may offer, to whom, or to impose special taxes on some and not on others. Or put in the reverse sense, if cities defend franchise fees and gross receipts taxes on cable companies on the "public rights of way" grounds, then it should impose equivalent fees on all other businesses who use public rights of way.

The second justification is that a cable system is a monopoly and should therefore be treated as a public utility. This is simply untrue. Even in areas where cable systems are fully developed, offering all the new services available, seldom do even half of the families choose to connect up to the cable. Since virtually all of these non-cable users own television sets, it appears that more than half of the population who could receive cable does not find it essential to their viewing pleasure. As a consequence, it takes an enormous stretch of the imagination to claim that cable is a public utility—that is, an essential service—or a monopoly, since half the television households manage to live without it. Having the only cable system in town does not make a cable system a monopoly any more than having only one Chevrolet dealer in town makes the dealer a monopolist. Moreover, in the future, cable television will face even stiffer competition from other forms of telecommunication, including direct broadcast satellites, low-power and VHF drop-ins, subscription television, to say nothing about traditional television broadcasters.

Cities have one additional interest which I think is legitimate. It has a duty to its citizens to give them the opportunity to enjoy the fruits of the emerging telecommunications technologies as quickly and with as little interference as possible. Of course, they should encourage competitive bidding; of course, they have a responsibility to see that the promises the cable operator made are carried out; of course, the city's cost in administering these responsibilities should be borne by the cable operator. But the people want cable television, not protracted political battles conducted at their expense.

However, the line must be drawn somewhere. A cable operator should pay his fair share, but he should not be expected to pay an inordinant share of the city's operating budget. This, in my opinion, is exactly what cities are doing: they are attempting to finance city services not remotely connected with cable television by imposing arbitrary and specific taxes, in one guise or another, on their local cable operator. As good citibens, we are willing to pay a franchise fee directly related to the cost of overseeing the cable system, and we are willing to pay those other taxes generally applied to all private businesses; but we should not be singled out to pay additional taxes not imposed on all other businesses.

Contrary to the popular perception, there is no guarantee that a cable system—particularly a new 100+ channel built in a major urban market—will ever make a profit. The enormous capital costs can only be recaptured and profit made if people are willing to pay for services and programming not now available on television. While those of us in the industry hope people will choose to do this, we don't know that they will, and as a consequence, new systems involve an enormous risk to the investors. Giving away big portions of our channel capacity and paying taxes based on gross receipts, not profits, only make the risk that much greater. Which leads me to one last point in my thesis:

That is the growing infatuation in many cities with owning their own cable systems. I totally and completely oppose this movement, and believe it is an anathema to our entire social, cultural and economic fabric. The public—at whatever level—should restrict itself to providing those goods and services the private sector cannot or will not offer. National defense, welfare, police and fire protection are but a few examples. Reasonable men and women can argue as to exactly where the line should be drawn, but this country is based on the concept of private risk, private initiative and private enterprise.

Unless a private cable operator is unwilling to finance and build a competitive cable television system, a city has no business putting their taxpayers at risk by borrowing money in their name. Individual cities have absolutely no business borrowing in the tax exempt bond market to finance services private companies—borrowing in the taxable money market—are ready, willing and able to provide. As you gentlemen know all too well, the federal budget is already in deficit enough without encouraging cities to raid the Treasury via the tax exempt bond markets of even more federal revenues. Moreover, as a citizen and taxpayer, I object to subsidizing with my tax dollars the cable television service in a few cities. Finally, cable television is a telecommunications service to people. In this country, we would never dream of having a government-controlled television station, where government bureaucrats decided what the people could watch and what they could not see. If a private cable operator does not offer the viewers what they want to see, then he will go out of business as the people vote with their dollars. The entire concept of government ownership of an important means of communications is to me, completely unacceptable, and I hope you will see these attempts for what they are: local political designs on a new source of revenues which they need not call taxes. Next thing you know, cities will be in the dry cleaning business to make money, giving new meaning to the expression, "I've been taken to the cleaners".

I would now like to focus on the Committee's Question D: Should the Federal Pole Attachment Law be broadened to include poles owned by cooperatively-organized telephone and power utilities and government-owned utilities? The answer to this question is an unequivocal yes. My testimony is based on my extensive experience dealing with the Snohomish PUD and my observations on recent actions of other PUDs in the State of Washington.

In the mid-1970s, Viacom and Liberty Communications challenged an arbitrary and capricious 67 percent increase of the Snohomish PUD through the Washington State judicial system all the way through an adverse Supreme Court decision.

The Snohomish PUD, a Washington public utility district, is a special-purpose, municipal corporation organized pursuant to Washington State Law (RCW 54.04.010). The Snohomish PUD claimed on one hand to be exempt from rules generally applied to similarly situated private parties such as the antitrust laws and certain common-law contract and landlord-tenant principles. On the other hand, the District ignored rules traditionally applicable to municipally owned public utilities under the theory that it is a unique type of municipal corporation. The outcome of this litigation was that the State Supreme Court ruled that no court review of the Snohomish PUD's actions was applicable on either a reasonableness standard or an arbitrary and capriciousness standard. With this favorable ruling, they were able to continue to abuse their monopoly powers and collect the rate increase, because under Washington State Law, these municipal corporations are not accountable or subject to judicial review of their actions.

I think it would be worthwhile to amplify on how these PUDs gain this monopoly power. These entities own outright, or control through joint ownership with private utilities, all the existing pole space in question. This pole space is necessary for the cable operator to construct his plant. As a practical matter, most cable television franchises prohibit for aesthetic and environmental reasons the cable operator from setting his own poles except in special situations where prior approval must be obtained. Furthermore, the cost of constructing a duplicate set of aerial pole facilities or placing all of our facilities underground, would be financially infeasible. Simply stated, there is no practical or economically feasible distribution alternative to the use of existing poles for CATV compaines. In essence, the relationship between the PUDs and the cable television companies involves a monopolistic supplier and a captive buyer. And it is perhaps significant in this rgard to observe that when we were litigating the unreasonable pole rate increase, the Snohomish PUD made no move of its own to terminate the relationship and force us to vacate their poles. As with any similarly situated monopolist, there was no advantage to the Snohomish PUD in putting us out of business—only increasing their revenue through monopoly pricing.

Thus far, my comments have been directed to the ability of publicly owned utilities to abuse their monopoly powers and raise their pole rates arbitrarily and capriciously. I would now like to give you specific examples of the rates of private and public utilities.

First, I will recap the current rates of several private utilities.

Pacific Northwest Bell: $2.50 per pole per year
General Telephone & Telegraph: $3.00
Puget Sound Power & Light: $3.50
Portland General Electric: $2.63 to $3.50
Pacific Power & Light: $2.50

These rates should be contrasted with the rates charged publicly owned utilities.

Snohomish PUD: $6.00 per pole per year
Seattle City Light: $5.00 per pole per year
Gray's Harbor PUD: $7.37 effective 7/1/82
Cowlitz County PUD: $7.11

One can quickly see that the rates charged by the public utilities are over 100 percent higher than those charged by the private utilities. This seems particularly incongruous when one considers the fact that the public companies have lower operating costs than the private companies. Over the years, a generally accepted method of computing pole rates has evolved. This method is found in the current Federal Act and many of the state acts regulating pole rates. This methodology includes three factors:

1. historical cost;
2. annual operating cost as a percentage of the historical cost; and
3. percentage of the usable space on the pole allocated to cable.

Factors 1. and 3. are relatively consistent between the private and public sectors; however, factor 2. (the operating costs) decidedly favor public power. These operating costs are less because public power has no profit element, has a lower interest charge on its debt and finally, pays lower state, federal and property taxes than private companies. These factors would indicate that, if anything, publicly owned companies should have lower pole rates than privately owned companies.

There are several other factors which the Committee ought to consider. First, you must take notice of the coincidence of recent rate increases by the municipal power companies and the problems these municipal power companies are having with nuclear power.

Secondly, they tend to handle the administration of such increases in an unprofessional business manner. Without regard to the validity of these increases, they are often presented to the cable company in a high-handed and untimely fashion. Cable companies often receive little advance notice, and therefore cannot adequately budget for this increase in costs, nor can they recover these uncontrollable fixed costs through rate increases in their rates on a timely basis from the cities that regulate them.

Finally, and probably most importantly, these publicly owned companies have been guilty of denying access to cable companies so that they could expand their service area. This happened in our case where the construction of the Town of Mountlake Terrace was delayed for several years during the course of litigation. Here, the public interest was frustrated.

I believe that I have clearly demonstrated that many publicly owned power companies have abused their monopoly power in both pole ownership and their unique, unchallengeable legal standing, and subsequently have extracted monopoly prices from the cable television industry. Because of this demonstrated abuse, I believe that all cooperative telcos, power companies and government-owned utilities, including PUDs in the State of Washington, should be brought under the Federal Pole Act to provide the cable television industry a vehicle for terminating these abuses.

Thank you for the opportunity to appear before you, and I will be happy to answer any questions you may have at the appropriate time.

Senator GORTON. Ms. Porter?

Ms. PORTER. I am Susie Porter, legislative assistant for the Washington Public Utility Districts' Association, representing 26 public utility districts throughout the State of Washington and more than 500,000 customers.

I appreciate having the opportunity to come before you to discuss the Federal regulation of cable television companies and of pole attachment rates. Because of the shortness of time and the potential impact on public utility districts, I will address only the subject of regulation of pole attachment rates in my remarks, and ask that you carefully review the more detailed written testimony which has already been presented to you. We will be happy to present further written testimony on the more technical information about formulas and our relationships with cable companies.

Washington PUD's have two basic concerns, maintenance of local control in the ratemaking process and establishing those rates on the basis of cost of service. Legislation contained in S. 898 takes away these authorities from public utility districts. We feel it would not be in the public interest and we intend to oppose it vigorously.

I would like to draw your attention to a study which was prepared by Cowlitz County PUD at the direction of PUD managers in the State. This study will be the basis for many of my remarks today, and has been presented to you earlier.[1]

Washington's PUD's recognize that historically the basis for their pole attachment rates has not been standardized across the State. We are coming to grips with this problem and are attempting to work with the cable companies in that regard. However, we wish to point out that just as residential electric rates vary from PUD to PUD across the State, because of differences in the cost of providing service, pole attachment rates will vary also. Each utility has its unique factors which affect cost of service and these factors should be considered in the determination of pole rental rates just as they are in setting electric rates. We feel that a standardized statewide cost-of-service formula should go a long way toward solving any problem Washington's public utilities may have with the cable companies and that this sort of local level ratemaking is far more equitable to both parties than a mandate from Congress.

The CHAIRMAN. May I ask you—I had a chance to read your statement last night and it's a long statement and we have some questions. It will be in the record but if you could make your major points I'd appreciate it.

Ms. PORTER. I think I will stay with the first part of the statement and there will be a gap in the middle.

It is our strong feeling that the rates charged should be an actual reflection of the cost-of-service to our utilities for the attachment and maintenance of cable company lines. We also feel that we should charge no more or no less than we would charge ourselves, within each of our utilities, should we be in the business of operating a cable television service.

The cost-of-service formula used by some of the PUD's is contained in the study you have before you on page 32. This study recognizes that there are more costs involved to the utilities than just placing a bracket within a given space on a pole. The utilities perform certain functions in providing pole space that ultimately benefit the cable television operator who contacts that pole as well. These costs are in addition to the basic cost of owning and installing a pole for joint use and are not directly related to the use of a certain space at a certain height on the pole. There is no logical reason for those entities which contact our poles to be free of the financial obligations to share in the cost of these activities.

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[1] The study referred to has been retained in the committee files.

Because each of our PUD's is unique and has extreme differences in geography, demography, and internal administrative costs, we feel that establishing a statewide or nationwide rate could result in our ratepayers subsidizing the cable television companies.

One of the factors which has caused public utilities in the State of Washington to remain viable is their local decisionmaking ability. Locally elected commissioners, who are close to the internal operations and problems of their specific utilities, may determine what is best for their individual PUD's. Proposals such as that which appeared in S. 898 would remove that local decisionmaking ability. It would place ratemaking in the hands of the FCC, which is not in the best position to determine what is best for local ratepayers. In arriving at either a nationwide formula or specific rate, there is no possible way the FCC could take into consideration the situation unique to a given PUD or other utility.

In the State of Washington, PUS have been alleged to have higher rates than private utilities. In fact eight PUD's currently have rates which are either the same or as lower than those of Puget Sound Power & Light Co. There are a number of reasons for private utilities' rates sometimes being lower. Large private utilities have a greater ability to absorb a margin of error in determining a pole attachment rate. They have also been very wary of setting any rate which might put them in an adversary position with regard to their regulatory body, the Washington Utilities & Transportation Commission. Such encounters can be costly to the utility, both monetarily and in terms of their relationships with the UTC concerning rates of more consequence than pole attachment rates.

At this time Puget Sound Power & Light Co. charges $3.50 per pole attachment to the cable companies with whom they deal directly in their service area. In discussions with representatives of that company, we have learned that this reflects only the administrative costs of those attachments and is not a cost-of-service formula. It is Puget Power's intention, in future contracts with cable companies, to adopt a cost-of-service formula and they feel that the one we have presented to you is a viable formula. This change in policy, which they feel is only fair to their ratepayers, will probably result in substantially higher rates to the cable companies, but Puget Power contends, as we do, that a cost-of-service approach, and prorating the cost on a "whole pole" basis, is the only equitable solution for electric utility ratepayers.

Only by achieving a local negotiation of pole rental rates which reflect the cost of service of each utility can equity to both cable television and the utility be achieved. To set a higher rate than cost of services places an unfair burden on the cable television operator and limits the expansion of this useful service. To set a rate lower than cost of service results in the subsidization of a privately owned, profitmaking corporation by the residential electric ratepayer. We urge Congress to resist the intense lobbying efforts of cable television advocates who would seek to mandate an artificially low pole rental rate that they cannot achieve through a fair negotiation process and to allow the local determination of pole rental rates to continue.

Thank you.

[The statement follows:]

STATEMENT OF SUSIE PORTER, LEGISLATIVE ASSISTANT, WASHINGTON PUBLIC UTILITY DISTRICTS' ASSOCIATION

My name is Susie Porter. I am legislative assistant for the Washington Utility Districts' Association, representing 26 public utility districts throughout the State of Washington, and more than 500,000 customers.

I appreciate having the opportunity to come before you to discuss the federal regulation of cable television companies and of pole attachment rates. Because of the shortness of time and the potential impact on public utility districts, I will address only the subjects of regulation of pole attachment rates in my remarks. Within the next two weeks, we will be presenting further written testimony on the more technical information about formulas and our relationships with cable companies.

The subject which you are discussing is one which has also arisen before the Washington State Legislature, and much of the research which I will bring before you today is a result of studies we have done regarding pole attachment rates charged to cable television by Washington State PUDs. It is our opinion that the passing of legislation regulating the pole attachment rates of public utilities would not be in the public interest.

Washington's PUDs have two basic concerns: maintenance of local control in the rate-making process and establishing those rates on the basis of cost-of-service. Legislation contained in S. 898 takes away these authorities from public utility districts, as does its counterpart in the Washington State Legislature, and we intend to oppose both vigorously.

I would like to draw your attention to a study which was prepared by Cowlitz County PUD at the direction of PUD managers in the State. This study will be the basis for many of my remarks today.

Washington's PUDs recognize that historically the basis for their pole attachment rates has not been standardized across the State. We are coming to grips with this problem and are attempting to work with the cable companies in that regard. However, we wish to point out that just as residential electric rates vary from PUD to PUD across the State because of differences in the cost of providing service, pole attachment rates will vary also. Each utility has its unique factors which effect cost-of-service and these factors should be considered in the determination of pole rental rates just as they are in setting electric rates. We feel that this should go a long way toward solving any problem Washington's public utilities may have with the cable companies and that this sort of local-level determination is far more equitable to both parties than a mandate from Congress.

There have been any number of moves toward amending the amount of control over local entities by agencies of the federal government. An example which comes to mind is the reporting of rate and cost-of-service information which was required of public utilities by the passage of PURPA. These reporting requirements placed a significant cost burden on public utilities and yet served no useful purpose as the rate-making process of public utilities is open to the public and cost-of-service data has always been available to our ratepayers. We do point out, however, that Congress placed a strong emphasis on basing rates on cost-of-service when it passed PURPA. We urge Congress to be consistent in this philosophy and to not override local efforts to achieve cost-based pole rental rates by mandating Federal regulation.

The Washington PUD Association feels it would be a step backward should Congress decide to reverse this posture and grant the FCC authority over cable pole attachment fees or other similar public utility activities. We respectfully request that you leave such decisions to the locally-elected officials who know the local circumstances and conditions.

BACKGROUND

Washington PUDs have, in the past, determined rates for cable pole attachment fees by a variety of methods. In some cases, the figures have been the result of a general estimate of what the incremental costs to the utility of having the cable companies attach their lines to our poles are. Other cases have simply been a matter of negotiating a rate which is low enough to avoid controversy. In a few cases, the PUDs have determined that it would be a benefit to its customers to set an artificially low pole rental rate so that cable television could be expanded to alleviate poor television reception in the service area. For years and years this presented no problem as electric rates were also low and there was no necessity to update pole rental rates. Then, as electric energy costs began rising, PUDs became faced with multiple rate increases to their electric ratepayers. It became necessary for the PUDs to assure their ratepayers that all of their rates and charges were based on cost-of-service and that no one was getting a free ride at the ratepayer's expense. This led to the determination of cost-based pole rental rates by some PUDs and a re-negotiation of pole rental agreements to put them into effect.

It is our strong feeling that the rates charged should be an actual reflection of the cost-of-service to our utiilties for the attachment and maintenance of cable company lines. We also feel that we should charge no more or no less than we would charge ourselves, within each of our utilities, should we as electric utilities be in the business of operating a cable television service.

The cost-of-service formula used by some of the PUDs is contained in the study you have before you (see p. 32 of study). This study recognizes that there are more costs involved to the utilities than just placing a bracket within a required one foot of space on a pole. The utilities perform certain functions in providing pole space that ultimately benefit the cable television operator who contacts that pole as well. Examples of such functions include trouble dispatching, tree trimming, fielding and mapping of pole contact applications, pole inspection and replacement, and inventory and billing. These costs are in addition to the basic cost of owning and installing a pole for joint use and are not directly related to the use of a certain one foot of space at a certain height on the pole.

There is no logical reason for those entities which contact our poles to be free of the financial obligations to share in the cost of these activities.

Because each of our PUDs is unique and has extreme differences in geography, demography, and internal administrative costs, we feel that establishing a statewide or nationwide rate could result in our ratepayers subsidizing the cable television companies. As you can clearly see from our study, there should remain a certain variance in the actual rates to reflect cost-of-service differences.

One of the factors which has caused public utilities in the State of Washington to remain viable is their local decision-making ability. Locally-elected commissioners, who are close to the internal operations and problems of their specific utilities, may determine what is best for their individual PUDs. Proposals such as that which appeared in S. 898 would remove that local decision-making ability. It would place ratemaking in the hands of the FCC, which is not in the best position to determine what is best for local ratepayers. In arriving at either a nationwide formula or specific rate, there is no possible way the FCC could take into consideration the situations unique to a given PUD or other utility.

By virtue of P.L. 95–234, enacted in 1978, Congress exempted public utilities by definition from a Federal determination of just and reasonable rates. There was a good reason for that, and for the maintenance of local control of public utilities.

Two provisions of the Federal Power Act deliberately withheld this authority from the Federal Power Commission. The pertinent provisions are in sections 201 (b) and (f). They read:

"(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce. . . . The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, *but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce*, or over facilities for the transmission of electric energy consumed wholly by the transmitter. (49 Stat. 847–848; 16 U.S.C. 824(b).)

"(f) *No provisions in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a state*, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee or any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto. (49 Stat. 848; 16 U.S.C. 824(f).)" (Emphasis added)

Quite simply, inasmuch as Congress specifically withheld from the Federal Power Commission the power to regulate any phase of local distribution of electricity, and has decided to leave such regulation in the hands of the States and local governments, it would be a strange reversal of this wise decision to now take out of the hands of local government, and vest in a Washington bureaucracy, the regulation of a peripheral but important phase of local power distribution: the power to control the use by strangers of property constructed and owned by a local utility.

In addition to the determination by Congress, there have been several decisions by the Washington State Supreme Court holding that municipal corporations such as the City of Seattle and Snohomish County Public Utility District have the authority to establish the terms and conditions, including charges, under which private parties may use public property. (*Baxter-Wycoff Co.* v. *Seattle*, 67 Wn. 2d 555, 408 P.2d 1012 (1965); *Snohomish County PUD* v. *Broadview Television*, 91 Wn. 2d 3, 586 P.2d 851 (1978).

In the case of Snohomish County PUD, at the time of the aforementioned litigation, standard charges had been established for the use of its poles. The charge was based upon the District's analysis of costs of providing and maintaining the utility poles. All other users of the poles, such as telephone compaines, the U.S. Navy, the Booneville Power Administration, and a variety of businesses and other private parties, have paid the uniform charges without comment or challenge—except for local cable television companies.

The basic position of the cable television companies has been that as long as the utility poles are already there, the cable television industry should only be required to pay the incremental costs associated with the cable television facilities. In essence, the cable television industry wanted a "free ride". To paraphrase the cable television argument, they maintain that as long as the bus is going down the street, they should be able to ride free of charge. In essence, they are saying "I'll pay for the seat I sat in but not for the chassis, frame and wheels because I don't directly occupy them." Just as the bus seat is useless without the rest of the bus, one foot of pole space is useless without the rest of the pole. As we have demonstrated in the study presented to you today, there are other charges they should pay which are inherent in the upkeep and administration of the space which we provide them.

Historically, rates have been established nationwide by a variety of means—many as easy as pulling a rate out of the air which would result in as little controversy for the utility as possible. Others have been determined by what has commonly become known as the "California formula". To use such methods does a disservice, particularly to those small utilities with little or no margin for error in the area of cost-of-service. If a utility's ratepayers are subsidizing the cable company, there is definitely something wrong with the rate which is being charged. The formula presented to you in our study is a first step in assuring that situations like that will not continue to arise.

In the State of Washington, PUDs have been alleged to have higher rates than private utilities. In fact, eight PUDs currently have rates which are either the same as or lower than those of Puget Sound Power and Light Company. There are a number of reasons for private utilities' rates sometimes being lower. Large private utilities have a greater ability to absorb a margin of error in determining a pole attachment rate. They have also been very wary of setting any rate which might put them in an adversary position with regard to their regulatory body, the Washington Utilities and Transportation Commission. Such encounters can be costly to the utility, both monetarily and in terms of their relationships with the UTC concerning rates of more consequence than pole attachment rates.

In 1979, the State of Washington adopted legislation which gives the UTC jurisdiction over pole attachments for private utilities. The fact that there have been no complaints brought to the UTC over private utility rates does not mean that they are good rates, or cost-of-service rates. If only means that their rates are generally comparatively lower, and are not the subject of as much concern as those of PUDs, whose rates have come to more closely reflect cost-of-service.

At this time, Puget Sound Power and Light Company charges $3.50 per pole attachment to the cable companies with whom they deal directly in their service area. In discussions with representatives of that company, we have learned that this reflects only the administrative costs of those attachments and is not a cost-of-service formula. It is Puget Power's intention in future contracts with cable companies, to adopt a cost-of-service formula and they feel that the one we have presented to you is a viable formula. This change in policy, which they feel is only fair to their ratepayers, will probably result in substantially higher rates to the cable companies, but Puget Power contends, as we do, that a cost-of-service approach, and pro-rating the cost on a "whole pole" basis, is the only equitable solution for electric utility ratepayers.

When one considers the subject of regulation, an obvious question comes to mind. The same cable companies which are so eager to have you legislate and regulate the rates charged them by utilities are not themselves regulated. The only recourse which their customers have should they feel the cable companies' subscriber rates are too high, or that the service provided is poor, is to elect not to receive cable service at all. The average subscriber rate per month for a cable customer in the State of Washington is well above the national monthly average, yet subscribers have no recourse to the UTC in this State. Perhaps you should consider legislation, as we are currently doing, which would regulate the cable industry in this regard.

Cable companies contend that they are at the mercy of utilities with regard to pole attachment rates charged. We point out that pole rental rates are established by across-the-table negotiations involving both the cable company and the PUD. Since both parties have a voice in the negotiations, neither party is at the mercy of the other. Furthermore, a review of existing agreements between PUDs and cable companies indicates that almost without exception the agreements clearly state the provisions under which the rental rate may be raised. If PUDs fail to live up to the terms of these agreements, then ample legal recourse is available.

CONCLUSION

Only by achieving a local negotiation of pole rental rates which reflect the cost-of-service of each utility can equity to both cable television and the utility be achieved. To set a higher rate than cost-of-service places an unfair burden on the cable television operator and limits the expansion of this useful service. To set a rate lower than cost-of-service results in the subsidization of a privately-owned, profit-making corporation by the residential electric ratepayer. We urge Congress to resist the intense lobbying efforts of cable television advocates who wou'd seek to mandate an artificially low pole rental rate that they cannot achieve through a fair negotiation process and to allow the local determination of pole rental rates to continue.

The **CHAIRMAN**. Thank you.

Mr. Mackin?

Mr. **MACKIN**. Good morning Senators Gorton and Packwood. I appreciate the opportunity to be with you this morning and apologize for not having my text available prior to the hearing this morning.

I manage the Pullman and Moscow TV Cable Co. It's a 27-year-old family business serving seven communities in eastern Washington and northern Idaho. All are located within a 15-mile radius. Our smallest system which serves approximately 250 families. Our largest system serves less than 5,000 subscribers. Although I am a member of the Independent Operator's Board of the National Cable Television Association my remarks are my own personal opinions.

I appreciate an opportunity to express my feelings this morning but I would also confess to you that my feelings come from a point of frustration.

As a cable television operator, an independent operator, I'm often frustrated by the positions that I have read in the National League of Cities' publications indicating that to be the position of the cable television industry; but as a former local elected official I am frustrated by the position that I have seen characterized as the cities' position in

National Cable Television Association publications. Both publications give the impression that there is unanimity within the other organization.

Personally I feel there is a tremendous difference in the city cable relationship in a community the size of Pullman, Wash. and that of Seattle, but at the present time existing Federal regulations seem to ignore difference in capabilities and resources of the two communities. For example, the National League of Cities, by definition, considers a small city one of under 50,000 population.

Within the State of Idaho therefore there is only one city.

Mr. MACKIN. This does create a problem; as a local official in Idaho I read in a publication what the "city's" position was in testimony offered to your committee.

As far as the actual questions that were suggested for this morning, I would like to first address my own personal position on the regulation of basic cable rates.

I, having served in the local government and have managed a cable television system, I am not opposed to regulation at the local level but at the same time I am not inviting it, but I do not feel the Federal Government should remove the authority for the rate regulation of basic service only.

The CHAIRMAN. Would you say that again?

Mr. MACKIN. Basic subscriber rates, the authority for regulation at the local level, I am not opposed to. Mandating that there shall be regulation at the local level, I am opposed to, but the authority being there as it was in your compromise——

The CHAIRMAN. Well I don't think anybody was opposed to that.

Mr. MACKIN. I hope not. There are instances, however, when unreasonable delay in the processing of rate requests can create financial harm which would inhibit both the level and quality of service to a community. In States where municipal ownership is not prohibited unreasonable regulation, rate regulation, could be used as a method of confiscating the existing system.

On another question, that of franchise fees, I feel that the Federal franchise fee guideline for 3 to 5 percent rate is truly beneficial during the development stage of cable television. At the conclusion of that developmental stage then I think it would be appropriate that there be consideration of a State option before Federal standards would prevail. A franchise fee in my opinion should be a fee charged for the use of public right-of-way and should not exceed the fee charged other users for that same service. In this case, in our community, it would be the private electric, private telephone, and private gas, who use the same public right-of-way. I don't think the franchise fee charged the cable company should exceed that but during developmental stages I think 3 to 5 percent has proven to be a fair and reasonble guideline.

The last point that I would like to make this morning pertains to municipal ownership and in my opinion if—the only time that municipal ownership should be considered would be by the FCC in a waiver proceeding, after insuring that (1) an RFP reasonable in nature had been offered, (2) no bona fide applicants for it, and (3) the public would not otherwise be served. Then the FCC would review the RFP to see that it was in compliance with these FCC standards, in line with a national communications policy. I think that is what makes it unique, that there is a reason for the Federal Government to prohibit municipal ownership because it is in line with achieving a national goal in a communication era. At this time there is a waiver procedure that has been used for the telephone industry when they have requested the opportunity to provide cable television service in their own markets so that might be an alternative to be considered.

If a municipality did provide cable television service on a competitive basis I see no reason that they should remain exempt from State, local, and Federal taxes on revenue derived from that service.

Thank you very much for the opportunity to be here and that concludes my remarks.

[The statement follows:]

STATEMENT OF DON MACKIN, MANAGER, PULLMAN TV CABLE CO.

My name is Don Mackin. I manage the Moscow/Pullman TV Cable Co., a 27-year-old family business serving seven communities in Eastern Washington and Northern Idaho, all located within a 15-mile radius. Our smallest system serves approximately 250 families and our largest system has less than 5,000 subscribers. I am a member of the Independent Operators Board of the National Cable Television (NCTA), but my remarks are strictly personal.

I appreciate the opportunity to express my views, primarily from a point of frustration. As an independent cable operator, I have often been frustrated by the "cable television" position as expressed by the National League of Cities publications; and as a former local elected official, I have been frustrated by the "city" position expressed by the National Cable Television Association. Both publications give the impression that there is unanimity within the other organization.

There is a tremendous difference in the City/Cable relationship in a community the size of Pullman, Washington with a population of 24,000, and less than 5,000 basic cable subscribers, and a city like Seattle. Present cable regulations at the federal and state level appear to have ignored these varying resources and capabilities. A small city by National League of Cities standards (under 50,000 population) could be served by a cable system with less than 12,500 subscribers, which the National Cable Association would consider medium sized.

As to the questions that were posed for this morning; I feel that Congress should not limit the authority of local government to regulate the basic rates for cable television service, but at the same time, it should not invite regulation of these rates, unless there is evidence of abuse of existing authority. Unreasonable delay in the processing of a rate request could create financial harm that could inhibit both the quality and the level of service provided to the community. In states where municipal ownership is not prohibited, there could be a remote possibility that unreasonable rate regulation could be used to confiscate an existing system.

On another question, that of the franchise fees, I personally feel that the Federal Franchise Guidelines (3–5 percent) have helped maintain order during the developmental stage of the cable television industry. A franchise fee should be for the use of the public right of way and should not exceed the fee charged similar users, such as the privately owned electric, gas and telephone companies. When the development stage is complete, this might be an appropriate state consideration before federal guidelines would prevail.

The last point that I would like to address is that of municipal ownership. Unless state law prohibits, I feel that municipal ownership or operation of a cable system should not be permitted, except by waiver issued by the FCC; but only after determining (1) that a reasonable Request For Proposals (by FCC standards) was made and (2) there were no bonifide applicants and (3) that the public would not otherwise be served. The procedures that I hope would be considered would be those that have traditionally been used in consideration of waiver requests by the phone industry when they have asked to own or operate cable systems in their own markets. I would assume that a municipality would not be exempt from state and federal taxes on revenue derived from cable television services.

That concludes my remarks and again, I appreciate the opportunity to be here.

The **Chairman**. Thank you; Mr. Brock?

Mr. **Brock**. Thank you, Senator Packwood.

I'd just like to begin by saying that what I'm going to say doesn't necessarily represent the view of all the city council members of the Bellingham City Council.

Senator **Gorton**. But a majority you hope?

Mr. **Brock**. I know I've been authorized by the mayor to be here and make these remarks.

I think the question you, Senator Packwood, asked of the other panel is probably the most relevant: What don't we like about the S. 898? I guess my disadvantage is that I have neither read the bill nor have been able to talk to too many people about what it intends to do. I would agree that if it is innocuous or middle ground, as you state it to be, I would be hard pressed to articulate any reasons why I should—our city should not be in favor of it. I did talk to a representative of the Oregon League of Cities about a week ago and she represented to me that the rate regulatory provisions could only continue to be exercised by municipalities that could show a certain level of off-the-air reception, that if the off-the-air reception was pretty good, then the authority to regulate the rates would not be allowed and the language that deals with that was such that it would be very hard to—unless you are out in the middle of Montana some place, it is going to be very difficult to fall within the category where you would have the authority to continue to regulate rates.

Now I don't know if that's correct or not.

The **Chairman**. No, interestingly enough, that's incorrect, the fault of the National League of Cities with this. I saw the mailings that were put out to their members, well, what was in the bill. The mailings were simply wrong; they were putting out what had been in a draft prior to its insertion into the bill which didn't even come out of the committee and was changed again on the floor with the compromise. I think they misled a lot of cities and I think ultimately to the city's detriment because after hearings now, the cities are not likely to get any better bill, than they had in that compromise.

For whatever reasons, the National League of Cities chose to fight against it——

Mr. **Brock**. I think—just to proceed with that for 1 minute, I think that you do talk about whether or not cable television is monopolistic or not, I think to the extent that you do have good off-the-air reception and this is an argument I've been making for a couple of years up in Bellingham, that maybe there isn't as much of a need for the authority of local government to regulate as where you don't. For example, in Portland we always got all the three major networks off the air and I've expressed some concern in Bellingham about the fact that a lot of places in the city where you can't get the three major networks off the air and for those reasons it is—well, there does need to be regulation because if you can't do that then you're really not even into television as a consumer and the retort that I get from the company is, well, that's not true. If you're willing to put up an antenna you can get three or four, at least three or four or five channels so I don't know about that. I do know that with all the kinds of things that are happening in cable television today that this is a very important service for people and I don't believe that it should be compared to movie theaters and bowling lanes and the like because I think it has to be compared to other kinds of video services that can be brought into the homes because I think if you can't compete, someone else can't compete, someone else can't compete at that level then I think it does approach being monopolistic.

My written comments address mostly the Bellingham experience with the refranchising process and it's apparent to me that both Senators have been—have in fact read that and maybe I shouldn't go into it in much detail but I think that it does demonstrate, if Bellingham is going to be representative of other cities that maybe in the refranchising process, from the standpoint of considering whether or not marketplace competition is going to insure that the citizens of the community are going to get fair and competitive rates, may not work in the refranchising processs.

I think that it's also indicated that Bellingham is on the leading edge of that refranchising process. We have what I understand to be one of the oldest cable television franchises in the country. It's been a 30-year franchise which is now just expiring so whether or not this will happen is somewhat questionable at this time.

Now I presume that a question might be asked of me as to why do I think that—well, in fact it was already asked of somebody else, but why do I think the things would work out the way they did in Bellingham. I think the easy answer from the industry would be that the RFP and our proposed regulatory provisions were so strict that that is what inhibited interest in the Bellingham franchise. I don't think that's the case and the reason I don't think that's the case is because the Bellingham RFP was very much like the Vancouver, Wash., RFP in regulatory provisions and in many ways a lot like the provisions that were adopted in the RFP process in Portland, Oreg., just over a year ago. In fact we used a consultant from Portland, a fellow by the name of Steve Jolin, who had been very involved in that process in Portland and in Multnomah County and I think the Senators are aware so I'll just state that both those cities received very vigorous competition in terms of proposals and I think what happened here is twofold. I think that our local operator who is owned by one of the largest cable television companies in the United States made it clear, very informally, or maybe he didn't, I don't know, but anybody that was going to come in and bid in the Bellingham situation was going to become involved in some very significant legal entanglements that were going to cause them to spend a lot of money for a long time and I think that's one of the factors.

Another one was the fact that we didn't want to be in a situation where we were without cable services for any period of time. We therefore put into the proposal a requirement for the successful operator to build a system, if indeed that would have been necessary, that we coudn't have worked something out with the current operator.

The CHAIRMAN. Who is your current operator?

Mr. BROCK. Nationwide Cablevision, it's a subsidiary of Telecommunications.

I think the other thing is, and there was some representation to this effect informally be people I talked to that I really believe that at least among the major companies in this country that there is some kind of an unspoken accommodation, I think they understand that some of their subsidiary operations are marginal or maybe even that there is a perceived kind of dissatisfaction with that operation, that isn't even reasonable.

The city council in some cities are trying to take the local operator to task and there isn't any justification for it but I would say in fairness to our current operator, the franchise expires after the end of 1982. We didn't have any reason to be significantly dissatisfied with the level of service. The reason that our city council did what they did and requested submission of an RFP was because they felt that fundamental fairness and recognizing the fact that it was their intent to only issue one franchise, that fairness required, and the length of these franchises, fairness that the whole industry have a shot at the Bellingham market and they further felt that it would, this kind of free enterprise competition would give Bellingham the best kind of a deal. As I stated, it didn't work out that way. As was commented by one of the other panels, it was that local government really doesn't, particularly in the area of rate regulation, doesn't really do a very good job of rate regulating. I tend to agree with that. I think as you gentlemen, of course, know well it does become a political matter.

The city council members, the closest people to the public that is getting the service, and it is a problem. Not only that, I think we're talking about some very sophisticated issues. We're talking about rate of return, we're talking about whatever is in the franchise that reflects the rules that are being followed. When you look at—along with the rate increase, and these are very sophisticated and I think that's because of the structure of the cable television industry in this country. You are usually dealing with people on the other side, particularly if one of the smaller or middle-sized cities—they have far more expertise and background in these areas than either the staff representing these middle-size cities and certainly the council members. I just might note that, for example, in conjunction with the refranchising of the Bellingham franchise I've been dealing with a fellow that argued the *Boulder* case in the Supreme Court of the United States. This is a fellow who is one of the most imminent——

The **Chairman**. Would you figure yourself at a disadvantage arguing with him?

Mr. **Brock**. I do and I was at a conference this last fall in Boulder, and I talked to some of the people in Boulder, and they have come to the point where smaller cities—Boulder is much larger than Bellingham—have to think about whether or not they can continue to expend $100,000 to do battle with a company such as TCI in the Supreme Court of the United States and these issues come into play. This is the reason why I'd be very concerned about Federal legislation which was ambiguous, which would put cities back into an arena where we would be arguing with some very sophisticated and high-powered operators, industrial people in these United States about issues like this because I think we are at a real disadvantage.

The **Chairman**. May I answer your question about franchising?

They do not seriously contend, do they, by customer's usage they have some kind of a preferential right to an extension based on law?

Mr. Brock. Very definitely. That's the thrust of their argument, that it didn't make any difference if we issued a franchise to somebody else, that they were going to be there and operating until whatever the highest court of jurisdiction would be that would tell them they couldn't do it.

I would like to make a couple of last remarks. I don't think it's the Congress of the United States that gives us the right to regulate cable television. I think it's a common law that deals with franchises and public rights and the requirement that the private industry, if they want to use the public rights-of-way or the municipality of the country, they have to have some kind of a license or agreement to do so.

On the issue of the franchise fee, I think that the common assumption is that the franchise fee is for the municipality to recoup the cost of administrative—administrating cable television. I think too that the city ought to be able to receive some kind of monetary amount for the fact that essentially it's a leased right-of-way. I think after all it should be recognized that many times we must, either through condemnation processes or other ways, acquire these rights-of-way. I think when a private enterprise wants to come in and use those I think they should bear part of that cost.

As far as taxes are concerned I think it was made clear earlier that local government does in fact tax cable television and that really isn't part of the franchise fee. I don't think we ought to be able to use a franchise fee for taxation purposes and I think to the extent we tax, I have no problem with local government being obligated to allow the company to put on the bill if they want to or maybe mandate that it put on the bill exactly what that tax is so the taxpayers and the consumers, because it's passed through, see what that tax is.

The Chairman. Let me bring you back to the proposal, if I may.

I was most intrigued with your testimony and I couldn't believe that we have 18,000 subscribers and somebody would not want to bid for it. I'm not sure that you know why except that your references made you sort of an undercurrent of understanding that doesn't quite rise to the level of violating the antitrust laws or maybe it does but that has kept anybody else from coming and bidding.

Mr. Brock. I can be more specific about that.

We did have some early interest by a couple of large companies. In fact this is kind of what caused our city council to be encouraged, because early on I was concerned maybe we wouldn't receive any other bids by going through the RFP process but after the deadline had passed and the one nonconforming proposal had been opened I called around to some of the large operators, around the Pacific Northwest, that do in fact service cities and some of them said things like, well, we're not into the small and middle market now, we're going for the markets like New York and Boston. One indicated that they recognize that they are tender or that they have exposure and some of their subsidiary operations and there is kind of an understanding where you're dealing with markets such as Vancouver, which does not have cable television, but it's another kind of thing when you're talking about a company that's been in there doing business for a significant amount of time, particularly where there isn't any kind of showing that—and I think it would have to be pretty graphic, that the company that was in there was just doing a tremendously poor job. I did hear from some of them that if they knew that the company that was in there was—just wasn't doing the job that they would come and bid.

Thank you.

[The statement follows:]

STATEMENT OF PAT BROCK, CITY ATTORNEY, CITY OF BELLINGHAM

I am not an individual who devotes his full-time professional efforts to cable television matters. In fact it is probably somewhat out of the ordinary for a city attorney to become as involved as I have in a matter such as this.

While I did gain some exposure to cable television issues as the City Attorney of Richland, Washington, prior to becoming the Bellingham City Attorney six years ago, any intensive involvement with cable television issues began about four years ago when Bellingham's cable operator requested a rate increase under their franchise. That request triggered a long series of interactions between myself and representatives of the local cable operator and its parent company including both their corporate and retained special counsel. For the past 18 months that interaction has intensified and I have additionally had occasion to interact with potential competing operators since the current operator's 30-year franchise will expire at the end of 1982.

My presumption is that the cable television industry basically advances two types of arguments to support their contention that rate regulation is unwarranted. The first is that vigorous competition exists within the cable industry itself thereby insuring competitive pricing. The second is that competition with other entertainment options such as movie theaters, bowling lanes and the like insure competitive pricing of cable television services.

I would like to focus on this first issue of competition within the cable industry itself by describing Bellingham's recent experience with re-franchising, because I believe that both because of the nature of the cable television medium and the cable television industry itself, industry competition, particularly within any given market is insufficient to insure against the overpricing of these services.

Bellingham's current franchise, granted in 1952, confers rate regulatory powers upon the city and imposes a 1 percent franchise fee upon the operator, and I am told is one of the oldest franchises in the United States.

Because of the significant technological advances that have occurred over time we concluded that the provisions of the franchise could no longer be characterized as "state of the art" and new regulations were therefore drafted and adopted. I should point out that these provisions are not yet applicable to any cable operator, because no new franchise has yet been granted.

A little less than a year ago our City Council was faced with a significant decision as to whether negotiations ought to be commenced with the present operator for renewal of their franchise (subject of course to different terms and conditions), or whether a request for proposals ought to be prepared and distributed to all potential operators in a competitive environment without first ascertaining from the current operator what kind of a proposal they might be willing to make.

Given the fact that there was no significant basis for dissatisfaction with the current operator's performance, and believing we had the ability to recognize a fair and competitive proposal even if we were not comparing it with competing proposals, I favored attempting to negotiate a new franchise with the current operator without initiating a competitive bidding process. Much to the current operator's dismay, the City Council elected to disregard this option and directed staff to prepare an RFP and submit it to the cable industry for consideration.

Our Council's decision was not based upon dissatisfaction with the current operation or a perception that the current operator was not capable of offering the kinds of services our community wanted, but rather solely upon their belief that because only one franchise was to be issued that public confidence dictated that all interested companies be given an opportunity to submit proposals.

Our Council also sincerely believed that the application of marketplace competition would insure the best and most economical service for the community.

We began by preparing a draft RFP and regulatory ordinance which we distributed to the 50 largest MSO's for their input to make sure we were not imposing conditions that would diminish interest on the part of potential operators. The conditions we proposed were tight, but we didn't believe overly restrictive; they were representative of the kinds of terms and conditions that had been proposed by other cities and had generated significant interest. Receiving almost no negative input on our draft proposal we finalized the RFP and adopted the regulatory ordinance. We then widely advertised the availability of the RFP and gave potential bidders approximately two months to submit their proposals.

Before describing the outcome of that process, permit me to digress for a second and describe the Bellingham market. The current operator serves both the City and unincorporated urban fringe, the combined population approaching 60,000. For all practical purposes the City and urban fringe is totally installed with cable. Currently there are about 15,000 cable subscribers in the City with an additional 3,000 in the urban fringe. Our penetration rate is approximately 80 percent, almost unheard of in the cable industry. There can be no doubt that the City of Bellingham represents a very attractive cable television market.

As we embarked upon this process, the current operator through their corporate representatives made it clear that they did not intend to submit a competing proposal and that they did not intend to cease operating at the end of their franchise term even if they were not issued a new franchise. It was and continues to be in their position that notwithstanding the terms of the existing franchise relating to duration they have some kind of vested right to continue by virtue of the capital investment they have incurred absent city authorization.

At any rate, I awaited with great anticipation the deadline date for submission of proposals to see what kind of wonderful offers for service would be forthcoming. No conforming proposals were submitted. The current operator submitted what they call their "non-proposal" which while addressing many of the items we requested in our specifications, indicated a refusal to comply with our proposed regulatory provisions and was characterized by our consultant who was retained to analyze the proposals as not particularly competitive and somewhat unimaginative.

Contrary to our City Council's expectation, the lesson to be learned from the Bellingham experience, is that cable industry competition is not effective in the context of re-franchising. It is conjecture, of course, as to whether Bellingham's experience is typical of what we can expect for the future, since Bellingham is on the leading edge of the re-franchising process nationally. I believe it will be typical, particularly in the smaller and medium size markets.

Unless the City can interest other operators in the Bellingham market, the current operator will be granted a new franchise. It would be inappropriate to comment on whether or not the current operator had a strong suspicion that no other proposals would be submitted thereby affecting the competitiveness of their proposal, but I have advised our Council that we should evaluate their proposed rates as we would a request for rate modification, because marketplace competition did not come into play as was anticipated. In this context how is the public interest to be protected if rate regulatory authority is withdrawn?

Another element of the rhetoric we receive from the industry is that inasmuch as franchises are nonexclusive if one operator operates in a non-competitive fashion, competing franchises should be issued. In a circumstance where local government cannot even generate interest in a single franchise, how can we be expected to interest a second operator in competing in the same market? Experience has shown that overbuilt systems are financially unfeasible and that cable television in any given community will be monopolistic even where local government is willing to issue multiple franchises. It is my opinion that if two franchises are awarded, one company will ultimately prevail, purchasing the operating rights of the other at an inflated value thereafter passing that cost along to the consumer also.

I would conclude by stating that I believe that cable television at least as it exists today is utility-like in character and should be regulated by some authority. I further believe local government is capable of doing so in a manner consistent with the interests of the citizens of this county and constitutes the appropriate level at which such regulation should occur.

The CHAIRMAN. Ms. Porter, let me ask you a question.

Assuming the pole attachment law is good, what is the rationale for excluding the co-ops and PUD's and telephone companies?

Ms. Porter. I think you're looking perhaps at historical justification there where public utilities have recommended on a local basis traditionally is proven a viable response to the people of their self-owned utility. I'll just leave it at that.

The Chairman. You mean it's historical?

Ms. Porter. I think history has shown that it should be retained.

The Chairman. And your argument is that the local PUD's, because they are municipally owned, publicly owned, would not charge disproportionately higher rates or do not charge disproportionately higher rates.

Ms. Porter. Correct.

The Chairman. Mr. Goddard, I think that you disagree that they do charge—well, you in essence think that they are charging higher rates than necessary for the cost of the hookup, they are simply using the extra money for whatever expenses they have?

Mr. Goddard. That is correct. If you apply the Federal Pole Act to the PUD's you will come up with rates generally below $3, in many cases below $2, and then you have to accept that as the standard. Our company tried to find an avenue of appeal and we couldn't find one in the judicial system in the State of Washington. Thus we're coming back and lobbying for inclusion of the municipal corporations in the legislation.

The Chairman. I am not as familiar with Washington as I am with Oregon but even in Oregon the PUD's we have, perhaps with the exception of the Eugene area, are more likely to be rural areas than the major areas and I wonder if their hookup costs would be higher. They don't have the density that Puget Sound Power & Light or Pacific Bell—Northwest Bell has.

Mr. Goddard. I imagine that their imbedded costs would be—the full plant would be the same on a historical basis. Now on operating, I couldn't comment on the operating class because—well, I just couldn't comment.

The Chairman. Mr. Brock, although you—sorry, Mr. Goddard—although you haven't in your formal testimony almost exclusively directed your remarks to this public utility issue charge, I assume that your views on the subjects which we discussed with the first panel were relatively reflected by the cable television operators, were they not?

Mr. Goddard. Yes.

Senator Gorton. Do you agree with their opposition to municipal control of their rates?

Mr. Goddard. Yes.

Senator Gorton. I find this interesting. In one of the statements that you made here is, in connection with the Snohomish County PUD, that as with any similarly situated monopolies that there was no advantage to the Snohomish PUD in putting us out of business, only increasing its revenues through monopoly in pricing. Now isn't that exactly the position that you asked to be in in connection with your customers?

Mr. Goddard. Maybe I should qualify my answers. I think that if you are in a monopolistic situation in a community where there are few television broadcasting alternatives then there is cause for regulation. I draw my experience from the results in the State of California which has enacted a deregulation bill which is to encourage cable companies to rebuild and expand their capacity. It also has rate limits on the top end in terms of what percent penetration the cable system has on its passings. If you're above a certain limit in terms of penetration you cannot automatically raise your rates. My previous answer would be applicable to major metropolitan areas where there is substantial competition and diversity in the marketplace among video sources.

Senator **Gorton**. Would that include Bellingham?

Mr. **Goddard**. I don't know, what is the penetration of Bellingham?

Mr. **Brock**. The penetration rate is about 80 percent.

Mr. **Goddard**. I think in a situation like that there is cause for a reasonable standard of rate regulation.

Senator **Gorton**. The testimony of Ms. Porter set off that, also attempted at least to point out something on which I would like your comment. You stated that the prices at least of selected PUD's was something like double those of the private utilities and her testimony attempts to make the point that private utilities aren't charging the real cost, that they are advertising that their capital invesment, at least partially against the cable television operators but they are only charging the incremental cost and that many of them intend significantly to raise their rates in the next round of negotiations. And so that the cable pays a proportion of the capital investment as well as the operating costs. Would not that result in your paying to Puget Power and Pacific Power and a number of other private utilities roughly what you're paying the Snohomish County PUD now?

Mr. **Goddard**. I don't believe so. The State of Washington is—has opted out and has its own legislation comparable to the Federal Pole Act and the Federal Pole Act has three components, one, historical capital costs of the pole and two, the operating cost as a percentage of the imbedded capital pole cost and three, the percent of the pole used by cable so the original capital costs are included in the formula of the Federal bill so I would maintain that they are being compensated for their capital cost. As capital cost increase, as they change out poles, there are grounds for the pole rates to go up and there is a valid formula in the Federal pole bill that takes all these factors into consideration.

Senator **Gorton**. One last request or question in this respect; you then would want this kind of control even if the net result of it would be that your private power costs or company costs would increase to roughly the PUD level, as long as the formula was the same?

Mr. **Goddard**. Yes, we just want to have a mechanism to end the abuses where they occur. If there is no abuse we have no reason to impose the law. However, I believe that under the standards of the current Federal act, the PUD's rates would decline substantially more than the private power rates would rise.

Senator **Gorton**. And finally I take it that you share with most of the evidence in your business the proposition that either the owner of poles is the local government or the local governments in granting franchises should be allowed to make charges which in effect subsidize other aspects of the business? You do point out the fact that a number of our PUD's are in big trouble because of problems with WPPPS at the present time and that is obviously the case and obviously the power rates are going up very significantly and why shouldn't cable television pay part of those costs.

Mr. Goddard. We should pay our fair share and the rates are going to be applied to all residential consumers and all businesses in the community. I am not advocating a position that we should be treated any differently than any other business in the community and as Mr. Hirshfield said earlier, we will pay our fair share of the taxes proportionately with any other competitive service, whether it be movie theaters or direct broadcast satellites or whatever.

Senator Gorton. Ms. Porter, I'd like again to ask you about Mr. Goddard's statement and ask your comment on it. He says, "As with any similar situated monopoly there was no advantage to the Snohomish PUD in putting us out of business, only increasing its revenue through monopoly pricing." Now you seem to indicate in your testimony that this is a harmless transaction and in fact there is negotiations between the PUD and the cable company but that is essentially an unrealistic statement, is it not? The cable TV company has to pay whatever the cable company—well, whatever the PUD asks under present law, does it not? How does it have any bargaining ability; where can it go to string its wires but to you?

Ms. Porter. OK. There are two answers to that. First of all they don't have to choose to contact—the poles, they can erect their own poles if they feel that they can achieve a greater cost service.

Senator Gorton. Would Snohomish County permit a second set of poles?

Ms. Porter. You'd have to ask somebody else other than the PUD. You'd have to ask the other elected officials.

Senator Gorton. Would you, Ms. Edmondson?

Ms. Edmondson. No.

Ms. Porter. I can't speak specifically for negotiations as how much PUD, on the $6 rate, which Mr. Goddard has referred to, however other specific negotiated contracts have resulted in our coming in with a proposed cost-of-service rate and the cable company coming in and saying this is too high and here is why we think it is too high and you've seen some discussion and our willingness to look at their given situation, whether it's a reception problem or they are actually showing ours is not cost of service. You always find that in the negotiation process and what we are looking at now in the statewide formula, something we have come to grips with, with our utilities, and are encouraging. I think the cable companies will receive this kind of response. We don't feel we should charge more than the cost of service but we don't feel like we can charge less than the cost of service.

Senator Gorton. Mr. Brock, I think I have another question for you; you covered already in part, you heard the earlier panel here, you listened to Ms. Edmondson as well, that this does seem quite obvious in the community the size of Bellingham or Vancouver, which has not previously been cabled, but there is intense competition for that initial franchise, is there not? It doesn't seem to be an exception, does it?

Mr. Brock. I don't think so.

Senator Gorton. So the thrust of your testimony is that when a franchisee has been in a community for some time there is an opportunity to renegotiate the franchise for that competition seems to vanish.

Mr. **Brock**. That's the conclusion I have to draw from the Bellingham experience.

Senator **Gorton**. Does that conclusion result from your experience or discussion with any other communities of your relative size, others to your knowledge had the similar experiences.

Mr. **Brock**. As I stated I think Bellingham is generally on the leading edge of this refranchise process. For that reason I really haven't found any other community, either similar size or a different size, where I've been able to share our experience and theirs in trying to see whether that might vary my conclusions.

Senator **Gorton**. In other words you think you're going to be asked part of this question or the expert on this question—other people are going to be calling you?

Mr. **Brock**. I've had a number of calls and discussed this with quite a number of people.

The **Chairman**. I'll have to agree with his conclusions. I don't know if there will be a refranchise from 1952.

Mr. **Brock**. It depends on what is granted and the length. It was quite long for a franchise. I don't think you'll find any franchise any more than 30 years long.

Senator **Gorton**. Then I want to get to the gist of your recommendation, given at least your experience, experience which may be repeated in other communities throughout the Nation, you want the widest possible degree of municipal authority, this kind of negotiation, presumably the smallest number of Federal and State restraints on that, municipal authority in the negotiation process, I take it?

Mr. **Brock**. That's right. I think the question you could ask me is what does Bellingham do now.

Senator **Gorton**. Well, I will ask you that. Go ahead and tell us.

Mr. **Brock**. I think we've got one option to, rather than in a bidding contest search out the potential operators and see if we can interest them in the Bellingham market. I have done that to a very small degree but I think we might find some interest from the smaller operators. I don't think we're going to find interest from the largest, it's going to be maybe some small company.

The other option is municipal ownership and I think that when you're in the kind of situation Bellingham is then that is maybe one of your options. I should state that the Bellingham City Council has taken a strong position that they do not want to do that. Now whether or not that they will change——

Senator **Gorton**. Bellingham will be opposed to State or Federal legislation which prohibits giving that option?

Mr. **Brock**. I'm sure that's true. I'm sure that they would feel there should probably be an option that they could entertain if they chose to and on that question about ownership, I think there are a couple of things that come into play. We have heard a lot about the fact that cable television is an electronic newspaper and the first amendment comes into play very significantly.

Maybe the Senators are familiar with the St. Paul situation. I've talked to some of the St. Paul people at a conference I attended some months ago and I am convinced that there are mechanisms that could be utilized that would get around the first amendment concerns. I don't feel that a city ought to operate a cable television. I think ownership and operation should be two separate things and I think that program content could be dealt with that essentially would not be flying in the face of the person contracting.

Senator GORTON. I believe Mr. Mackin wanted to comment?

Mr. MACKIN. The suggestion was made that he should ask what should Bellingham do now and my response, why not renew with the TCT, go back to the existing franchisee. He prefaced his remarks by saying that they were very satisfied with the company that was now in business there.

Senator GORTON. Mr. Brock?

Mr. BROCK. I don't purport to be an expert in television matters but I would probably go way down on the limb to say that this is based on some discussions I've had with some companies that did come in and do both an engineering study and a financial study of Bellingham's situation and chose not to bid. Certainly an argument could be made that it's a bunch of baloney and shouldn't be taken seriously by anybody but they have offered a proposal where the base rates, I believe I could be corrected on this, but their proposal that a base rate of $7.95 a month. I really believe that competitive rate in Bellingham could be somewhere around $5 on the basic services. I don't think we're going to end up with that.

The CHAIRMAN. Well, I have no more questions. Mr. Brock raised an interesting point about the first amendment. I think it's an issue that will grow. We are not far away from the electronic delivery of newspapers, if you want to call it that, as through the wire or through the air. The Supreme Court has made it very clear that the Federal Government has a right to regulate electronic dissemination of information and that is bound, in some States, to come close to clashing with the freedom of the press whether or not it's Government ownership or not. It's a moot point. I'm not quite sure if we may not need a new amendment to the first amendment if we're going to extend that protection to electronic journalism.

Senator Cannon could not be here today but may have some questions for some of the witnesses and will submit them to you. We would appreciate it if you would see them and—if you give us the courtesy of reply.

We will keep the record open for a few weeks for other comments of people who wish to contribute. The following groups of individuals have already submitted for the record and I want to reassure them that these statements will be in the record, I have statements here on behalf of Inland Power & Light and Clallum County PUD, Charles Royer on behalf of the National League of Cities and Seattle City Light and I have found this most informative, very helpful.

I don't think if we had these hearings in Washington, D.C., with the national representatives of all the associations we would have gained any more than we've gained this morning.

Senator GORTON. I agree with that.

I would like to thank the members of this panel as well, and thank the panel for helping us very significantly in our enlightenment here.

The CHAIRMAN. Thank you, the meeting is adjourned.

[The meeting was adjourned at 11:15 a.m.]

CABLE TELEVISION REGULATION

FEBRUARY 16, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Albuquerque, N. Mex.

The committee met in the Albuquerque Convention Center, Albuquerque, N. Mex., at 1 p.m., Hon. Harrison H. Schmitt, presiding.

OPENING STATEMENT BY SENATOR SCHMITT

Senator SCHMITT. The hearing of the subcommittee will come to order. When Mayor Kinney and Mayor Shafer arrive, I hope somebody will direct them to the table.

I will have a brief opening statement, and then we will proceed with the opening remarks by each of the panel members and then I will have some questions for the committee's enlightenment.

The purpose for holding the hearing today, ladies and gentlemen—and I welcome you all to it—is to review the state of cable television and related communications activities in New Mexico as a base for the national review of this industry and its impact on other industries that has been undertaken by the Senate Commerce Committee under the able direction of Senator Packwood, of Oregon, and the chairman of the Subcommittee on Communications, Senator Goldwater, of Arizona.

We are looking at drafting legislation that will address the issues that are within the jurisdictions of the committee, and most specifically are currently under the jurisdiction—regulatory jurisdiction of the Federal Communications Commission.

I think it's important that we build the record of these hearings on, in a sense, case studies of how local communities, local public utilities, cable entities, as well as States as a whole are dealing with this explosion of opportunity that has come from broadband communications. In reality, we are not just talking about the cable industries. We are talking about every other industry that is taking advantage of broadband communications for the transfer of information, and all industries and groups that are affected, beneficially, or potentially, adversely, by the explosion of opportunities in cable, direct broadcast satellite, optical fiber, and other systems that can, in theory, make available to the American consumer and to New Mexicans an extraordinarily broad range of information activities.

This is the second such field hearing to be undertaken by the Commerce Committee. The other hearing—I should say the first hearing was held in Seattle, Wash., on January 18 of this year. Further hearings will be scheduled, and not only in the field, but also in Washington, to explore various possible legislative proposals, as well as any specific proposals that may be introduced by individuals or on behalf of the committee or its members.

It's likely that cable TV, or I think it more appropriate to say broadband communications, will gradually interject itself into almost every need of media and information exchange about which we know now, and many that we have not anticipated. It is quite probable that the technology will exist as it almost does today for the transfer of electronic newspapers, into the home electronic mail, into home and businesses, the transfer of entertainment in a very specialized way that, frankly, I have told my friends in television.

Television began to undercut the present status of public television in providing quality—high quality entertainment to a very select audience. All of these things are being made possible by the technological explosion in which we live and that is bringing broadband communications to the fore.

Although this obviously presents many opportunities, it presents many challenges to existing industries, to existing media of information exchange, as well as to local government.

Although it's primarily bureau supported, it has been estimated recently that cable network advertising alone—that is strictly cable network advertising—presently estimated at a $100 million a year will hit $2 billion a year by 1991. That is probably a conservative estimate if present trends continue.

Many are concerned about the future of cable television. Policymakers at State and local levels, cable television system operators, equipment suppliers, telephone companies, program producers, advertisers, satellite operators, public interest groups who are concerned about issues of privacy, and certainly, most importantly, the consumer or potential consumer of cable broadband communications services.

All have a stake in future cable TV, and we want to hear from our two panels, and the witnesses therein, how they view the issues, and get their recommendations for Senate action.

I would be very frank in telling you that I have no strong opinions one way or another, except on the nature of the problems. I don't have strong opinions, and I don't believe that the committee, as a whole, has strong opinions on the solutions to those problems.

There are many conflicting inputs that have been received by the subcommittee. I am sure we will continue to get those. What we must do in this area, as we have already done in radio broadcasting deregulation, and beginning of TV broadcasting regulation, and the Senate's version of a broad telecommunication's deregulation bill, S. 898, is to find the middle ground to make sure that all existing interests are able to compete in a free and open environment. At least as free and open as possible, while at the same time new services at lower costs are provided to the consumer.

It is not an easy path to tread, but it is one which we obviously must tread, or we will stagnate as far as information exchange is concerned. The consumer being the net loser, and the country an even greater loser, as other nations and other committees begin to dominate this field of telecommunications.

With that, I would like to begin the panel discussion here with Mr. Douglas Dittrick, president of Tribune Company Cable, Inc., whose home office is Mahwah, N.J.

We will then hear from Mr. Max Sklower, the general manager of KOAT; Mr. Tom Staubitz, Hobbs CableVision; and then as a mayor arrives, from their other duties, the Honorable Mayor Kinney, and the Honorable Tom Shafer, mayors of Albuquerque and Portales, respectively. Doug.

Mr. BARSHOV. Mr. Shafer will not be here today. Unfortunately, he could not make it. My name is Stephen Barshov, New Mexico Municipal League, and I will make some comments.

Senator SCHMITT. Stephen, move forward to the chair that the mayor was going to occupy. He was going to speak on behalf of the Municipal League. I am sorry we won't be here. If he has a prepared text, it will be made a part of our record. We still expect to hear from Mayor Kinney.

Doug, if you would begin, I presume with a short statement. I hope the instructions have gone forward that we would keep the statements short and then proceed with the questions.

Mr. DITTRICK. Senator——

Senator SCHMITT. Doug, could I interpret? There is one thing I forgot to mention, and if you do not address it in your testimony, we will address it through questions, or you can add to your testimony. But let's face it, the consent decree that has been proposed for the settleemnt of this longstanding A.T. & T. antitrust, clearly will affect, if it goes into place, many aspects of cable, its competition with local operating companies, or potential competition with local operating companies. The issue of cable as a common carrier, I think, will be accelerated by that consent decree rather than pushed into the background. It is a very, very mushy situation, in my mind, right now whether that consent decree is in the best interests of the consumer of this country and the ratepayer of telephone services, and it will impact, directly or indirectly, on the future of cable television and broadband communications in general.

I am sorry I forgot to mention that, but I hope that it will be part, in the back of your mind, as you testify today.

Doug, please proceed, and I apologize for interrupting.

STATEMENT OF DOUGLAS DITTRICK, PRESIDENT, TRIBUNE COMPANY CABLE

Mr. DITTRICK. Senator Schmitt, ladies and gentlemen, my name is Douglas Dittrick, and I am the president of Tribune Company Cable. Our company operates 16 cable systems in 8 States serving more than 100,000 subscribers. Here in Albuquerque we bring cable television to 30,000 subscribers. In addition, I am a member of the executive committee of the National Cable Television Association's board of directors.

I would like to address the A.T. & T. things during the questioning discussion if we can. I didn't specifically include that in the prepared remarks.

In the brief time available to me, I want to put the issue of municipal regulation of cable in perspective, to strip away some of the careless rhetoric. While my colleagues from the New Mexico Cable Television Association will explore some of the specific problems in more detail, I would like to give you an overview of the situation from our vantage point.

Last December, shortly after the Senate had removed the cable provision from S. 898, the League of Cities issued a nine-point manifesto calling for virtually complete control by cities—through regulation or outright Government ownership—of cable television. Although the League of Cities by no means represents the views of all municipalities, the organization is a potent lobbying force in Congress and its threats need to be taken seriously by those defending the cable television industry.

The League of Cities justifies its increasing militancy toward cable on three grounds, which for the sake of simplicity I call the monopoly theory, the new federalism theory, and the cash-generating theory. The first two are simply red herrings created to justify the third; the third, in turn, runs absolutely counter to the national communications policy the Congress is now developing.

The most common argument municipal cable regulators use to justify their predisposition is that cable is a public utility monopoly. That's pure fiction. Moreover, the model they construct to prove cable is a monopoly bears no resemblance to what cable is today or is likely to become in the foreseeable future. In short, the monopoly theory is based on a very unlikely scenario of what cable might—just might—become in the distant future; namely, a communications giant dwarfing all competitors. Yet look at the realities.

Next to broadcast television, local affiliated stations and networks, cable is a fledgling industry.

You mentioned the divestiture that has been proposed in the courts, you mention the $2 million gross advertising revenue in 1991, barely equal the quarter's profits for A.T. & T. this past quarter.

As an industry, while growing, we are still an infant, and we are only beginning to feel the stiff competition from subscription television and will soon be competing for customers with direct broadcast satellities, low-power television, VHF drop-ins, and who knows what new services high technology will bring tomorrow.

In no video service is cable the only competition in town even today, and in the near future we will be facing many new kinds of competitors. Certainly, the introduction of fiber optic wire by the telephone companies will provide them with a competitive advantage over coaxial cable in such advanced services as high speed data transmission and other video transmission that you have mentioned earlier.

Therefore, we feel that it is absolutely no basis for the claim that cable is a pure public utility-type monopoly today, and even less reason to believe it could become so in the future as competitive services become stronger and more diverse.

One more note: Of all the city officials I have heard argue cable should be regulated like a public utility, I have not heard a single one support the other side of the public utility regulation coin; namely, the guaranteed rate of return on investment. If our rates should be regulated to protect the public, then it follows that our rate of return should be guaranteed to protect our investors.

It's a silly proposition of course. The more our rates would have to rise to give us a minimum return, the more subscribers we would lose, and, therefore, the higher our next rate increase would have to be until we had no subscribers left at all.

The second major justification for municipal regulation of cable I have called the new federalism theory. Here the argument intentionally confuses the purposes of Federal deregulation with the new federalism approach of transferring responsibility for many public social programs back to States and cities. The connection suffers from a basic flaw, however. Under new federalism, the Federal Government is saying that the private market can serve the public far better than Government regulation at any level. Airlines were not deregulated with the hope that State governments would institute their own forms of regulation anymore than cable television and other communications mediums are being deregulated with the hope that local governments will take over.

The most convincing case for regulation of cable—at least from the League of Cities perspective—point of view appears to be that we are what is alleged to be a cash-generating machine, which holds that cable television exists principally for purposes of providing money to provide cash to those municipalities—for those that are not running short to generate funds and provide their own municipal services. I object to this on two levels.

First, there is the practical observation that the theory is based on a false premise. Cable television is not a guaranteed moneymaker, not by a long shot. In 1980, figures just released by the FCC show that cable company earnings declined by 13 percent over the previous year before any adjustment for inflation. The cost of wiring the urban markets is truly astronomical, running as much as $30,000 or more a mile, running in excess of $100,000 a month to build underground utilities.

It is highly unlikely that the new 50 or greater cable systems will be generating income for the first 10 years of their operation, and there is absolutely no guarantee that they will ever be profitable.

Second, and more fundamental, is the real potential that cities have for killing this potential media before it can get started. Because cable must use a small proportion of the public rights-of-way, cities have a true monopoly power to extract from cable companies virtually any price they choose to grant access to those rights-of-way. Whether the price the city extracts comes in the form of a franchise fee completely unrelated to their oversight function, or in the form of opportunity costs foregone as a result of giving away channel capacity or in the form of in-kind contributions such as rebuilding a hospital, the result is the same. Cable is forced to absorb and pass on to consumers enormous expenses which its competitors escape completely.

I believe that the emerging national communications policy is based on the precept of competition. Cable television, which is now 30 years old, welcomes this fair and open competition. But fair is fair. The present climate in many cities is putting cable at a severe competitive disadvantage. The legislation that we hope you and your colleagues in the Senate and House will enact is not intended to give us special advantage, only equal opportunity to compete for a share of communications markets of the future.

Let me speak briefly about our relation here in Albuquerque. The Tribune Co. acquired the operating system here in 1977, and over the past 5 years have invested in excess of $15 million to construct and operate this plant. We have another 1½ years to go to complete that construction. We currently serve, as I indicated, 30,000 subscribers of—in the area of a low 30-percent penetration.

Far from the public utility, in the fact that we do not serve a large percentage of the people, and many people have opted not to take our service. We entered this market taking over a franchise which had not gotten off to a successful start, invested millions of dollars in this adventure, and we think we performed diligently in providing a wide and diverse service offering to our customers. We continue to hope to do that and our relations with the city have been quite good over this period of time. Thank you, sir.

[The statement follows:]

STATEMENT OF DOUGLAS DITTRICK, PRESIDENT, TRIBUNE COMPANY CABLE

Senator Schmitt, ladies and gentlemen: My name is Douglas Dittrick and I am the President of Tribune Company Cable. Our company operates 16 cable systems in 8 states serving more than 100,000 subscribers. Here in Albuquerque we bring cable television to 30,000 subscribers. In addition, I am a Member of the Executive Committee of the National Cable Television Association's Board of Directors. To give you some indication of the importance we attach to these hearings today, I am missing NCTA's winter Board meeting today in West Palm Beach!

In the brief time available to me, I want to put the issue of municipal regulation of cable in perspective, to strip away some of the careless rhetoric. While my colleagues from the New Mexico Cable Television Association will explore some of the specific problems in more detail, I would like to give you an overview of the situation from our vantage point.

Last December, shortly after the Senate had removed the cable provisions from S. 898, the League of Cities issued a nine-point manefesto calling for virtually complete control by cities—through regulation or out-right government ownership—of cable television. Although the League of Cities by no means represents the views of all municipalities, the organization is a potent lobbying force in Congress and its threats need to be taken seriously.

The League of Cities justifies its increasing militancy towards cable on three grounds, which for the sake of simplicity I call the monopoly theory, the New Federalism theory and the cash-cow theory. The first two are simply red herrings created to justify the third; the third, in turn, runs absolutely counter to the national communications policy the Congress is now developing. Let me explain.

The most common argument municipal cable regulators use to justify their predisposition is that cable is a public utility monopoly. That is pure fiction. Moreover, the model they construct to prove cable is a monopoly bears no resemblance to what cable is today or is likely to become in the foreseeable future. In short, the monopoly theory is based on a very unlikely scenerio of what cable might—just might—become in the distance future, namely a communications behemouth dwarfing all competitors. Yet look at the realities:

Next to broadcast television, local stations and the networks, cable is a fledgling industry; next to AT&T and the telephone operating companies, we are an infant; we are only beginning to feel stiff competition from Subscription Television and will soon be competing for customers with Direct Broadcast Satellites, low power television, VHF drop-ins and who knows what new services high technology will bring tomorrow.

In no video service is cable the only competition in town even today, and in the near future we will be facing many new kinds of competitors. The introduction of fiber optic wire by the telephone companies will provide them with a competitive advantage over coaxial cable in such enhanced services as high speed data transmission.

Therefore, there is absolutely no basis for the claim that cable is a public utility type monopoly today, and even less reason to believe it could become so in the future as competitive services become stronger and more diverse.

One final note: Of all the city officials I have heard argue cable should be regulated like a public utility, I have not heard a single one support the other side of the public utility regulation coin, namely the guaranteed rate of return on investment. If our rates should be regulated to protect the public, then it follows that our rate of return should be guaranteed to protect our investors.

It's a silly proposition of course. The more our rates would have to rise to give us a minimum return, the more subscribers we would lose, and therefore the higher our next rate increase would have to be until we had no subscribers left at all. Perhaps the regulators would then have to require that everyone subscribe to cable television. Not as implausable as it sounds when you think about municipal ownership of cable systems.

The second major justification for municipal regulation of cable I have called the New Federalism theory. Here the argument intentionally confuses the purposes of federal deregulation with the New Federalism approach of transferring responsibility for many public social programs back to states and cities. The connection suffers from a basic flaw however. Under New Federalism, the federal government is saying that the private market can serve the public far better than government regulation at any level. Airlines were not deregulated with the hope that state governments would institute their own forms of regulation any more than cable television and other communitions mediums are being deregulated with the hope that local governments will take over.

The most convincing case for regulation of cable—at least from the League of Cities perspective—is what I have only half-jokingly called the "cash-cow" theory which holds that cable television exists principally for the purpose of providing money to cash-starved municipal budgets. My objections to this come on two levels.

First, there is the practical observation that the theory is based on a false premise: cable television is not a guaranteed money-maker, not by a long shot. In 1980, figures just released by the FCC show that cable company earnings declined by 16 percent over the previous year before any adjustment for inflation. The cost of wiring the urban markets is truly astronomical—running as much as $30,000 or more a mile. It is highly unlikely that the new 50 or 100 plus channel systems will show a profit for the first ten years of operation, and there is absolutely no guarantee they will ever be profitable.

Second, and more fundamental, is the real potential that cities have for killing the goose before it can lay any eggs. Because cable must use a small proportion of the public rights-of-way, cities have a true monopoly power to extract from cable companies virtually any price they choose to grant access to those rights-of-way. Whether the price the city extracts comes in the form of a franchise fee completely unrelated to their oversight functions, or in the form of opportunity costs foregone as a result of giving away channel capacity or in the form of in-kind contributions such as rebuilding a hospital, the result is the same: cable is forced to absorb and pass on to consumers enormous expenses which its competitors escape completely.

I believe that the emerging national communications policy is based on the precept of competition. Cable welcomes fair and open competition. But fair is fair. The present climate in many cities is putting cable at a severe competitive disadvantage. The legislation we hope you and your colleagues in the Senate and House will enact is not intended to give us special advantage, only equal opportunity to compete for a share of communications markets of the future.

Thank you for this opportunity to appear before you today, and I will be pleased to answer any questions you may have.

Senator SCHMITT. Thank you, Doug. Max, would you proceed now? And I want to say "thank you" publicly already for your assistance through the years for bringing certain issues of the interaction of cable and other media.

It has been helpful to the committee to know what issues we ought to be addressing, at least. Max, please proceed.

STATEMENT OF MAX SKLOWER, GENERAL MANAGER, KOAT-TV

Mr. SKLOWER. Before I start, I have a prepared statement, but maybe it will run a little longer than Mr. Dittrick's here, but I hope not.

I am glad to see Mr. Dittrick here, and Mr. Straubitz of the cable business that we interact with. And the remarks that I will make, prepared remarks, may indicate that I am anticable by me. I am just an employee of KOAT; I am speaking of our business of being anticable. It might appear that way, but basically it really isn't. As Tom Staubitz here can tell you, we work very closely with a number of cable systems.

In our particular case, it's a very—it's not totally unusual, but we operate in New Mexico, which has a vast area here, and many of the people in this State would not have gotten our signal without cable. So, obviously, I can't be anticable.

We—as I said, Mr. Staubitz is a perfect example how we work with cable systems. However, from a historical standpoint, when we look at the Albuquerque cable, or Santa Fe cable, we were doing—serving those viewers just fine before the cable came in. The cable did offer additional services of which I have no quarrel with their pay services, and things like that.

As you will see, when I read this statement, I do take certain exceptions to some of the things that a cable system operating in my back yard can do that I can't do. So let me—I just wanted to try to set the stage to assure you that we are not really anticable. We would like to partake, if we can, in this new technology that you mention, and there are many new technologies that you mentioned. So let me read this prepared statement.

Here are some of the issues that affect KOAT-TV concerning the consideration of deregulation of cable TV.

Any consideration of deregulating cable TV should be done only in context with the proposed amount of deregulation of television. If one is deregulated unproportionately to the other, then unfair competition exists. Here is the present scenario: As it stands, there are few regulations that pertain to cable TV. They are not required to program any percent of time to news and/or public affairs, as compared to the very restrictive and demanding regulations that constrain broadcast licensees. About the only regulations affecting cable systems are the so-called must carry rules. These rules, incidentally, are being considered by Congress to be dropped. For example, these rules state that a cable system in Albuquerque must carry the signals of the Albuquerque stations, but they do not have to pay the stations for this carriage. I am really not that anxious for the cable system here to pay me for carriage, even though they are reselling my programing which is costing me over $5 million a year to maintain.

What I am concerned about is that without this present regulation the cable system can eliminate KOAT from its system and bring in, say, the ABC signal from Dallas or some other town. KOAT employs 120 people in Albuquerque, and in order to maintain a 40-person news department, plus a public affairs department, KOAT must have assurance that all of its signals will be available to all the people in Albuquerque in order to serve Albuquerque.

The present regulations say we must maintain news and public affairs. We would anyway, but the cable system who eventually could eliminate portions of our programing to the viewers that they have, has dismantled their outside antennas and does not have to maintain any type of lost-leader programing such as public service programing. For example, while KOAT employs 40 people in news, plus over 40 other people involved in setting up the news and public service programing, the local cable system has virtually no people at all employed for news or public service programing. They have recently given 1 of their 30 channels—or so I may be wrong on these channels—to the city, but the city had to hire two or three people to program that channel. I see some of those people here today that work for the city.

What would affect KOAT and other broadcasters dramatically is if the cable, in the future, could simply bypass portions of KOAT's programing, which KOAT must have available to the public in order to generate the ad revenues necessary to maintain this 120-person staff which serves this local community, not to mention its service to the entire State of New Mexico. Any regulations of this sort that would be unfair to one party and not the other, naturally I think are unfair competition.

Right now some additional very unfair competitive situations have developed because of certain regulatory conditions which govern television stations, but not cable. KOAT-TV has to purchase all of its programing on the open competitive marketplace, while the cable TV systems operating in Albuquerque and Santa Fe, to be specific, not only do not bid or pay for that type of programing, but the cable TV in Albuquerque, for example, is now selling advertising time which the Senator mentioned earlier. Not just national advertising but local advertising. Now, the cable will say, "Yes, we have to pay something." But I will get into that.

For example, KOAT-TV paid over $250,000 for the rights to televise the reruns of "Happy Days." We must then go out to the advertisers and sell them time on "Happy Days" to recoup this cost. On the other hand, the cable system in Albuquerque and Santa Fe pays literally nothing to either KTLA, the station it brings in from Los Angeles or to the Happy Days' producers, which is Paramount Studios, to show the same Happy Days reruns in Albuquerque that we are paying $250,000 for, and which we bid against the other stations here, who are also bidding for the rights to the Happy Days reruns.

Now, our sales people, then, are forced to explain to advertisers how we can expect to reap maximum audiences from a show which is being overexposed in Albuqerque on the cable. But at the same time, as I said, the cable is out selling advertising. So that seems like an unfair setup to me. Obviously, there either needs to be total regulation or total deregulation.

The copyright law being negotiated now is that the cable system must black out any other showing of Happy Days except KOAT's as long as KOAT has purchased the "exclusive rights" to this program for the Albuquerque market.

The other sort of situation that has been considered is where there is total deregulation of both cable and broadcasting in regards to program rights. Here, the cable system would have to negotiate with KOAT and everybody for the rights to carry their signal, and the cable would also have to negotiate with KTLA, Paramount, or anybody else. I am not so sure that isn't the solution, and I realize that is not in the jurisdiction of your particular committee.

Senator SCHMITT. I might add, Max, that it's not clear how that jurisdiction is finally going to settle down in the end. It's not clear. The Judiciary Committee is interested in exploring the issue. We do expect the House to do something soon, and when that comes over, it may well be referred sequentially to the Commerce Committee for its consideration. And we appreciate these comments on that issue.

Mr. SKLOWER. I felt that they are very much tied in with, even though it is not in the Commerce Committee.

Senator SCHMITT. It's not directly. We do have some jurisdiction.

Mr. SKLOWER. Because this is really the nuts and bolts of the situation, that the TV stations, particularly independent stations, who buy a lot of syndicated properties—and as it stands now, there is a compulsory carriage regulation that states that the cable must carry KOAT. I am talking to the compulsory carriage in the Albuquerque area. I doubt that it even includes Santa Fe.

I am trying to shorten this, because it's a little long here. I think I have gotten that point across.

In regard to the cable programing pay television, I have no quarrel with this. Here they are going out into the marketplace and paying the producers for the programing they are reselling to their subscribers. So they are literally going out into the marketplace bidding for a product which we had never offered in the past, the first-run movies and certain things. And they are offering it to people who are to pay for it. That, to me, is deregulation in itself. They are willing to gamble on that.

Regulations concerning the type of programing, the cable TV, it is free to program just about any kind of programing in terms of sex and/or violence, which gets beaten around the bush a lot of time, and they can program R rated or X rated movies. They are also free to run as many commercials as they wish without any Government intrusion. This is not the case in the case of over-the-air television. We are constantly under scrutiny by the FCC and the viewer groups concerning the programing contents and our commercial practices.

When you mentioned the amount of signals available. I thought this would be an opportunity to remind whoever it is that there are seven free over-the-air television signals emanating from Sandia Crest. Right now there are applicants now pending for 20 more or so free over-the-air channels from Sandia Crest with UHF low-powered TV stations pending. How many of those will ever be granted, I would say at least 10 to 15 are sure to be granted. That will mean that at that time there will be at least 17 over-the-air signals for TV in Albuquerque. There is the Albuquerque Cable right now that has, as he said, 30.000 subscribers. There is an M.D.S. System in Albuquerque offering pay TV. The Albuquerque Home Theatre never applied, I understand, to the Government. Now, four—one of the main companies in M.D.S. has applied to be able to offer, say, four or five M.D.S. channels in the city. So they could offer four or five different probably pay channels. There are also 21 radio stations in Albuquerque. 14 AM and 7 FM.

There's a daily morning paper, 6-day a week afternoon paper, several weekly papers, numerous weekly and monthly publications.

There are 72 other radio stations in New Mexico. There's also a TV station in Farmington. two TV stations in Roswell, a TV station in Carlsbad. and one in Clovis. There are some 100 plus transmitter stations in New Mexico, which rebroadcast signals of the Albuquerque stations, the Roswell stations. the El Paso stations. and Amarillo stations to the television set owners in New Mexico. There is no dearth of signals available to 99 percent of the TV owners in the State. In one or two rare instances, there may be several families that can receive only two or three stations because of their physical location. In addition, there are 20 or 30—I may be wrong on that—Mr. Dittrick knows better—cable stations in the State and covering even the smallest communities. There is also a new Channel 2 which is now licensed to go on the air near Santa Fe, and there's an application pending for a second TV, full-power TV station to serve Santa Fe on Channel 11.

In view of this overwhelming array of signals available to the viewing public. I feel that there are many Federal regulations affecting television licensees—and even cable, for example—that are totally outdated and unneeded. For example, television stations are prohibited from owning cable stations in their coverage area. Television stations are also prohibited from owning low-power television stations in their local coverage. Yet, at the same time, the cable station is permitted to program an unlimited number of channels. They are currently programing, I guess, over 20 in Albuquerque, and in many cases that Mr. Dittrick mentioned, in larger cities they are programing 80 channels.

Now, also, the networks are not allowed to own cable systems. This imbalance of regulation would apply to the cable position. Maybe Mr. Dittrick's company would like to own a television station or newspaper. The government forbids a lot of this, which I think is unfair to both the cable systems and to broadcasters, in particular. Particularly in this age of such diverse amount of programing available.

Senator SCHMITT. Max, we are going to run short.

Mr. SKLOWER. Is that it?

Senator SCHMITT. If you could summarize.

Mr. SKLOWER. I was a little wordy here.

Senator SCHMITT. Your entire text will be in the record if you want to conclude.

Mr. SKLOWER. Basically, I say that in the—in the context of deregulation the cable should be able to own radio and television which should be able to own cable stations or newspapers. I think in the case of our owning another low-power station, we have the staff to do, and equipment to do things that others don't. And we could, therefore, serve the public better. So basically, that's where I am at.

STATEMENT OF MAX SKLOWER, GENERAL MANAGER, KOAT-TV

Here are some of the issues that affect KOAT-TV concerning the consideration of deregulation of Cable TV.

Any considerations of deregulating Cable TV should be done only in context with the proposed amount of deregulation of television. If one is deregulated unproportionately to the other, then unfair competition exists. Here is the present scenario: As it stands, there are few regulations that pertain to Cable TV. They are not required to program any percent of time to News and/or Public Affairs, as compared to the very restrictive and demanding regulations that constrain broadcast licensees. About the only regulations affecting Cable systems are the so-called must carry rules. These rules, incidentally, are being considered by Congress to be dropped. For example, these rules state that a Cable system in Albuquerque must carry the signals of the Albuquerque stations, but they do not have to pay the stations for this carriage. I am really not that anxious for the Cable system here to pay me for carriage even though they are reselling my programming which is costing me over five million dollars a year to maintain. What I am concerned about is that without this present regulation the Cable system can eliminate KOAT from its system and bring in say the ABC signal from Dallas or some other town. KOAT employs 120 people in Albuquerque, and in order to maintain a 40-person News Department, plus a Public Affairs Department, KOAT must have its signal available to all the people in Albuquerque in order to serve Albuquerque. The present regulations say we must maintain News and Public Affairs. We would anyway, but the Cable system who eventually could eliminate portions of our programming to the viewers has dismantled their outside antennas and does not have to maintain any type of lost-leader programming. For example, while KOAT employs 40 people in News, plus over 40 other people involved in putting on our Public Service programming, the Albuquerque Cable TV system has no people at all employed for News or Public Service programming. They have recently given one of their 30 Channels to the City, but the City had to hire two or three people to program that Channel. What would affect KOAT and other broadcasters dramatically is if the Cable, in the future, could simply bypass portions of KOAT's programming, which KOAT must have on in order to generate the ad revenues necessary to maintain its 120 person staff which serves this local community, not to mention its service to the entire State of New Mexico. This would be totally inequitable and unfair competition.

Right now some additional very unfair competitive situations have developed because of certain regulatory conditions which govern television stations, but not CATV. KOAT-TV has to purchase all of its programming on the open competitive marketplace, while the Cable TV systems operating in our coverage area not only do not bid or pay for the same programs, but the Cable TV in Albuquerque is now selling advertising time against KOAT.

For example, KOAT-TV paid over $250,000 for the rights to televise the reruns of Happy Days. It must then go out to its advertisers and sell them time on Happy Days to recoup this cost. On the other hand, the Cable system in Albuquerque pays nothing to either KTLA, the station it brings in from LA or to Happy Days Producers (Paramount Studios) to show the same Happy Days reruns in Albuquerque that we are paying high prices for which we bid against the other stations here. Our Sales People are forced then to explain to advertisers how we can expect to reap maximum audiences from a show which is being overexposed in Albuquerque. At the same time, the Cable's Sales Force is telling advertisers that they have over 25 Channels of entertainment for their viewers, and that advertisers can get good advertising buys on their medium. Obviously, there is an imbalance here that needs some sort of regulation. The Copyright Law being negotiated now is that the Cable system must black out any other showing of Happy Days except KOAT's as long as KOAT has purchased the "exclusive rights" to this program for the Albuquerque market. The other sort-of-situation that has been considered is where there is total deregulation of both Cable and Broadcasting in regards to program rights. Here, the Cable system would have to negotiate with KOAT for the rights to carry the KOAT News and Programs on its Cable, and the Cable would also have to negotiate with KTLA and/or Paramount or both for the rights to carry any of these programs they are currently allowed to carry without paying for.

As it stands now, there is a compulsory carriage regulation which states that the Cable must carry KOAT but does not have to pay KOAT for its programming. When I say the Cable does not have to pay, I am subject to being reminded that the current Copyright Law says they have to pay a small sum into a Copyright Pool, eventually some of which trickles back to KOAT and the Producers, such as Paramount. This amount is strictly a token amount. Where KOAT pays over 2,000,000 dollars a year just for its non-network programming costs, the Albuquerque Cable probably doesn't pay more than $20,000 a year for rights, other than their Pay TV Rights. KOAT's $2,000,000 annual programming costs do not include engineering, or sales, or administrative costs; strictly programming cost.

In regard to the Cable Programming Pay Television, I have no quarrel with this. Here they are going out into the marketplace and paying the producers for the programming they are reselling to their subscribers. Not so in the case of their reselling the KOAT News and Entertainment Programs and not paying KOAT, who is paying dearly to program its time.

The Cable TV is also free to program just about any kind of programming in terms of sex and/or violence, including "r" rated or "x" rated movies. They are also free to run as many commercials as they wish without any government intrusion. This is not the case of television which is constantly under scrutiny by the ICC and viewer groups concerning its programming and commercial practices.

Right now, there are seven free over-the-air television signals emanating from Sandia Crest. There are applicants for some 20 more free over-the-air channels of UHF low-power TV stations pending. There is a good possibility that at least ten more of these will soon be granted. This will mean that there will be 17 over-the-air signals emanating for TV in Albuquerque. The Albuquerque Cable has some 20,000, plus, subscribers in Albuquerque who right now have a choice of over 20 channels. There is an MDS system offering Pay TV (Albuquerque Home Theater).

There is a daily morning paper, a six-day afternoon paper, several weekly papers, and numerous weekly and monthly publications. All of these various media have sales people out actively soliciting advertising, including the Cable TV system in Albuquerque.

There are 72 other radio stations in New Mexico. There is also a TV station in Farmington, two TV stations in Roswell, a TV station in Carlsbad, and a TV station in Clovis. In addition to this, there are some 100, plus, translator stations in New Mexico which rebroadcast signals of Albuquerque, Roswell, El Paso, and Amarillo TV stations to the television set owners of this State. There is no dearth of signals available to 99% of the TV owners in this State. In one or two rare instances there may be several families who can receive only two or three stations because of their physical location. In addition, there are 20 or 30 Cable systems in this State covering the smallest communities and the largest. Finally, there is another TV station going on the air in 1982 on Channel 2 which is licensed to Santa Fe. There is also an application pending for a second TV station seeking license to serve Santa Fe on Channel 11.

In view of this overwhelming array of signals available to the viewing public, I feel that there are many Federal Regulations affecting television licensees that are totally unfair. For example, television stations are prohibited from owning Cable systems in their coverage area. Television stations are also prohibited from owning low-power television stations in their coverage area. Yet, at the same time, our competitor, Albuquerque Cable, is permitted to program an unlimited number of Channels and is currently programming over 20 with possibility of programming over 30 or 40 in the near future. Also, the networks are not allowed to own Cable systems.

At one time there were only a few television signals available to viewers. I think that it is clear that that is no longer the case, and, therefore, ownership rules must be changed to meet current conditions.

For example, right now if KOAT applied to purchase a radio station in Albuquerque, the RCC would deny our application. Yet, KOB-TV, our principal television competitor owns and operates an AM radio station, 50,000 watts, and an FM radio station, 100,000 watts. Here again, we see unfair competition since they use their radio stations at no charge to advertise their television station's News, and Entertainment Programs constantly, while I have to purchase time when I wish to advertise.

I believe that KOAT should be able to own and operate radio stations and low-power stations and Cable systems, and even newspapers. There is enough competition that in no way would we be able to control the source of supply, namely Channels. For example, if KOAT were able right now to own a low-power television station, which would be just one of some 20 or more stations, we could utilize our resources, such as our remote equipment and skilled sports announcers to program High School and College sports activities on this supplementary Channel. We cannot do this now because of our commitment to our

ABC Network Affiliation Contract, but we have the resources, equipment, and personnel that could do it well on another Channel, but we are unable to do so. The Cable system, however, is free to do this on one of their many Channels.

Subscription television. Right now KOAT cannot offer pay as you view television, either on its own Channel or by owning another Channel. This is unfair, since the Cable can program as many subscription Channels as they wish. Also, if KOAT wished to go into another city and open a Pay TV station, the rules say that there must be four other non-subscription TV stations operating. Also, we would have to program on that station a certain amount of non-subscription material. This is unfair because the Cable system in the same town wouldn't have any restrictions on their non-subscription programming or their subscription programming.

Cable systems are free from any regulations concerning the sale or purchase of their ssytems. Broadcasters must wait three years before they can sell their properties. The Government must either put Cables on the same basis of marketability or they must remove any time restrictions on when broadcast stations can be bought or sold.

Some of the largest corporations in the World are allowed to own as many Cable systems in the U.S. as they wish. For example, Westinghouse recently purchased Teleprompter for $700 million dollars. Teleprompter operates Cable systems in 138 cities, yet the networks are only allowed to own 7 television stations, 5 VHF stations, and 2 UHF stations. Same is true with KOAT. KOAT can only own 5 VHF stations and 2 UHF stations in the U.S. This is inequitable. In todays flooded marketplace this ownership restriction against broadcasters should be lifted. Either that, or Cable ownership limitation should be imposed on a basis similar to broadcast ownership.

As I said before, broadcasters should also be able to own radio stations, newspapers and low-power outlets or Mds systems in their own cities. In other words, if our competitor, the Cable system, can program 50 Channels, we should be able to program at least two or three Channels.

Senator SCHMITT. I see the mayor—Mayor Kinney has arrived. Mr. Mayor, if you want to come up to your seat over here, and if you would like to proceed now, in order to save you some time. Would you take a seat out here in front of us?

Why don't you sit down, and we will let you gather your thoughts and proceed with Mr. Barshov. He will speak for the New Mexico Municipal League, and then we will rush to you.

STATEMENT STEVE BARSHOV, STAFF ATTORNEY, NEW MEXICO MUNICIPAL LEAGUE

Mr. BARSHOV. My name is Steve Barshov. I am staff attorney for the New Mexico Municipal League, and I listened very carefully to Mr. Dittrick's comments regarding municipal regulation and the purported purposes of that regulation. I would like to begin by quoting very briefly out of the New Mexico Cable Television Association's written testimony to put the relationship of municipalities and cable television companies into perspective. The testimony reads—this is at the bottom of page 3—"that the relationship"—

> At this point, we wish to strongly state that the relationship between the municipalities and counties, on the one hand, and cable companies, on the other, in New Mexico has been a very cordial and businesslike one. In fact, operators in New Mexico have found that generally speaking, city and county governments in New Mexico have been very receptive and very helpful with regard to the development of cable TV industry in New Mexico.

Now, that has to be taken in context. And the context it has to be taken in is that you have reasonable cable television owners and reasonable city administrators, and I think Mr. Dittrick's characterization of the National League of Cities as careless rhetoric is completely unfounded, and I would say that that is not going to promote a unified and cordial working relationship between municipalities and cable TV companies.

Putting the entire matter, hopefully, into perspective briefly, we have a situation in which cable TV companies seek to dominate in a municipality and use the municipality's right-of-way. They, in that sense, are similar to a utility; not saying that they are a utility, but they do have that common aspect of their operations in common.

The second point is that when they do seek to come into a municipality, as a matter of fact—not as a matter of law, but as a matter of fact, they end up with a monopoly, and they don't end up with monopoly as compared to competition with other TV stations or with municipalities' papers, but they end up with a monopoly as compared to other cable TV companies. As a matter of fact, according to the National League of Cities—and I assume their data is correct—about one-tenth of 1 percent of all the area served by cable, have two or more cable companies competing for the same geographic area. So basically what a cable company gets when it comes into a municipality is that de facto monopoly. It gets to share a geographic area and no other cable company can.

Now, in that context, who regulates this cable company to provide service to the public? Well, the Federal Government, as we have heard, is not really doing much. The basic FCC regulations don't really speak to the concerns of the local citizensry. Most States are not involved, and because it's the use of the city right-of-way it ends up, more by default than anything else, falling onto the shoulders of the municipalities.

Now, because municipalities have attempted to try to impose some minimum standards—and I think we can go through this in a rather short period of time to discuss what those standards are—they have been criticized as trying to create a noncompetitive environment, and I think that is totally untrue. I think it is the economics of cable and the fact that you can't have 15 companies each string up a line within a city that make it inherently noncompetitive. It's not municipal regulations. That's a total red herring.

In my opinion, Mr. Senator, the bottom line here is that municipalities seek to impose bare minimum regulations in order to ensure that when a cable company comes in to use the right-of-way and the facilities in the municipality, that a certain level of service, a basic quid pro quo in any contract, is provided to the citizens of the municipality. And as such, let me go through a few specifics quickly.

The first one is rates. As I understand it, no municipality does any more than regulate the base rates. That means the very, very initial rate that is established for the provision of the cable service. Any initial services, like home box office, and so forth, are charged at whatever the cable company seeks to get. Therefore, the statement that a municipality is going to abrogate some rate of return on behalf of the cable company is completely unfounded.

The second thing is that this general rating machine that the cable company is supposed to be in the eyes of the municipality, this growing source of revenue, is also completely unfounded. As you know the FCC has regulations as to what percentage the municipality can charge in terms of getting a franchise fee. The municipality is also bound by New Mexico law to not charge unreasonable franchise fees. The bottom line there is that the municipality is locked into a set formula, at most, and in most cases I don't believe the municipalities even come up to that formula. I believe the maximum of 5 percent, with exceptions, is allowed.

Finally, I would like to address the issue of this open competition. As I see it, and I am not in the cable industry, so I take this position as an observer, one who reads the court opinions and tried to discern what their meaning is. As far as I can tell, there is only one guarantee of open competition, and that is if cable companies are required to come forward, and in front of a municipality, and say, "Here's what we can do for your citizens. Pick the best one of us."

And as I understand the *Boulder* case, and other cases, where the cable companies have gone forward to prevent the municipalities from attempting to get as many bids as possible, they are actually going against competition and seeking to—to make their own position more solid within the municipality, and not allow for competition. And I think that the lessee—my interpretation of the Supreme Court's ruling in *Boulder* is that a—a cable company coming forward and saying, "Don't stop us from expanding so we can preclude the impact from anybody else coming in and bidding on it," that to me is against competition.

As I understand it, the only way of producing true competition is for the municipality to be able to impose a meaningful set of negotiating terms of an arm's length negotiation with the cable companies, and have the best one come out on top. That is what competition really is. And to take away the city's power to in any way negotiate by making its franchise fees meaningless, or taking away any regulatory authority it may have, I feel is the wrong way to go. Because it totally negates any competition, and it will not provide for the kinds of things that municipalities seek to provide for their citizens, for example.

And, again, quite quickly, what are the goals of local regulation as the FCC sees them? I understand really what they want to do is guarantee that state of the art technology and system upgrades continue, that permanent oversight of services is offered, that there is access to the system for public educational and governmental purposes, as well as third-party lessees. That there are reasonable rates for basic cable service; not for every single service that is provided. And to have some sort of monitoring so that the terms of the franchise agreement can be enforced, and, if necessary, revoked if the cable company does not comply.

These are not unreasonable restrictions that are going to put a cable company out of business. They are requiring that any franchised monopoly within a municipality has to serve the public interests, and that's what the municipalities are here to do.

Senator SCHMITT. Thank you, Mr. Barshov.

[The statement follows:]

STATEMENT OF STEVEN BARSHOU ON BEHALF OF THE NEW MEXICO MUNICIPAL LEAGUE

INTRODUCTION

The New Mexico Municipal League is the official association of the incorporated municipalities within the State of New Mexico. Of the 97 incorporated municipalities in New Mexico, 91 are members of the League.

Cable television companies and municipalities have cooperated in the past to provide reliable service to citizens. The basic instrument setting forth the rights and responsibilities of both the municipality and the cable company is the local franchise agreements. Up until recently, these franchise contracts were negotiated at arms length since the municipality and the cable company were both relatively free to act according to what each perceived to be in its self interest. However, recently the cable industry has initiated an all-out attack in the courts on the ability of municipalities to negotiate and enforce meaningful franchise contracts, while also lobbying extensively on the federal level in favor of extensive deregulation of the cable industry. The New Mexico Municipal League is alarmed at this trend and strongly feels the need to communicate the importance of limited, reasonable regulations on the cable industry.

The power and effect of cable companies on telecommunications is presently a mere shadow of what it will be in the coming decades. With fiber optics and two-way transmissions, cable television will become the dominant telecommunications mode in the nation. If the FCC relaxes the restrictions on cross-ownership, the result will be a few operators controlling the bulk of America's telecommunications network. These few owners will have little if any incentive to respond to the needs of local communities which individually may compose only a small fraction of their overall service area. Creating a cable network that is efficient, responsive, and covers a wide range of services can only be guaranteed if there is cooperation between the cable industry and the communities that it serves. Such cooperation has already occurred through the mechanism of the municipal franchise and it should be allowed to continue.

CABLE TELEVISION REGULATIONS

Municipalities should not be given any control over the content of any cable television broadcasts. However, municipalities should be able to negotiate to obtain services for its citizens and to obtain compensation reasonably related to the value of the use of the city's rights of way and the guarantee of the franchise monopoly. In essence, municipalities are seeking parity with the cable industry. Yet, the cable industry objects. They have raised anti-trust objections in court, they have lobbied for total deregulation on the federal level and have lobbied to obtain legislation prohibiting municipalities from reasonably regulating the cable industry. All of this has been done in the name of open and free competition. Unfortunately, these efforts will not foster competition. In reality, they are designed to avoid competition.

Only one-tenth of one percent of all cable systems in operation involve competition for the same geographic area (8 out of 6,000). In essence, when each cable operator comes into a municipality, it obtains a de facto monopoly over the geographic area it serves. Once it puts in the cable service, it is the master without any competitive pressure from other cable outfits. The only source of competition comes from cable companies competing to obtain a franchise from municipal government. If municipalities are deprived of the right to an equal negotiating position, there will be no pressure for competition or any pressure to provide comprehensive service to local citizens.

Of course, not all cable industry members are alike. In New Mexico, there has been a generally harmonious working relationship between the cable industry and the municipalities. See page 3 of the filed written testimony of the New Mexico Cable Television Association. However, this cooperation has been the product of both parties needing the other. The municipality wants the cable station so its citizens have access to the best telecommunications system. The cable station needs the municipality to provide access to its rights of way and to protect its franchise. Out of this mutual need, the parties can strike a reasonable balance so that the cable company is secure, and the community is well served.

In order to keep the balance alive, municipalities must be able to condition access to city rights of way upon the cable company:

1. providing a certain quantity of basic programming at a set basic rate;
2. providing certain additional services such as local access channels, etc.;
3. conditioning its continued operation under the franchise upon its full compliance with the franchise terms;
4. providing adequate consideration to the city for the granting of the franchise contract and allowing the cable company to use the municipal rights of way.

In order to further keep this balance alive, municipalities should be given freedom to charge any reasonable franchise fee that is related to the value of the rights obtained by the cable company. In New Mexico, the law mandates that franchise fees be so reasonable related. Thus, there is no need for arbitrary limits placed on franchise fees by the FCC.

There are no reasons for federal limits on local governments' authority to set basic subscriber rates. Placing this type of constraint on the municipality deprives it of the right to insure basic service to its citizens at a reasonable price. Municipalities want no control over the charges for additional services. However, municipalities do want the ability to negotiate franchises requiring the cable company to provide certain additional services at prices set by the cable company.

Regarding pole attachment, the municipalities do not want cable companies to be unduly burdened by unreasonable pole attachment fees. However, neither do municipalities want cable companies to be subsidized by ratepayers of other utilities. Municipalities should be free to charge reasonable rates for attachment to municipally owned utility poles without being hampered by overly rigid federal regulations.

MUNICIPAL OWNERSHIP

The cable industry alleges that the municipalities should be prohibited from owning cable systems on first amendment grounds. This is a specious argument. Municipalities which own cable systems must operate within the confines of the first amendment the same way private operators must. There is no reason why both private operators and municipalities cannot conform to the first amendment. Currently, approximately 30 municipalities own their own systems. They do so because the private companies refused to provide service. However, if municipalities are denied the freedom and authority to negotiate meaningful franchise agreements, more and more municipalities will consider ownership as the only viable way to provide adequate cable service to their communities. Municipal ownership may actually be a benefit to the cable industry in that there will be a greater number of cable owners thereby dispersing control of the industry.

Senator SCHMITT. Let's take—Tom, why don't we take you next if you are ready, and we want to keep a balanced record in the testimony. And then we will take a mayor.

STATEMENT OF TOM STAUBITZ, PRESIDENT, NEW MEXICO CABLE TELEVISION ASSOCIATION

Mr. STAUBITZ. Thank you very much, Senator Schmitt. My name is Tom Staubitz. I am president of the New Mexico Cable TV Association which represents——

Senator SCHMITT. Excuse me, Tom. Is that motel still in place down there?

Mr. STAUBITZ. God, we hope so, Senator. By the way, that's a private joke.

Senator SCHMITT. Not very private.

Mr. STAUBITZ. No. It was on the news down in Roswell.

Senator SCHMITT. I think we ought to tell everybody.

Mr. STAUBITZ. OK.

Senator SCHMITT. At the last convention, New Mexico convention, the Cable TV Association, I was giving a speech. In the middle of it, they had a kitchen fire in the motel down in Hobbs, and a few nights ago I arrived at the same motel, with the fire engines on the side, and had another kitchen fire, and I was to give another speech. So I don't know if it is cable television that is in trouble, or I am in trouble.

Mr. SRAUBITZ. Senator, I think it's those barn-burning speeches that you give.

Senator SCHMITT. Could be.

Mr. STAUBITZ. As the president of the New Mexico Cable TV Association, which represents over 150,000 subscribers in the State of New Mexico—first of all, Senator, I am very grateful for the opportunity to address this hearing on behalf of the cable television industry. Your provision of this forum to all of us here today represents one more step in the continuing efforts of you and your staff to provide the people of New Mexico with the most effective telecommunications service available.

The focus of my remarks this afternoon will be on the regulation of subscriber rates by city governments. The cable television industry is unique in that it is subjected to city regulation and, in addition, to already existing Federal regulation. Unfortunately these layers of regulations do not always mesh and the resulting situation is often one in which it is extremely difficult for the cable operator to provide subscribers with optimum service.

No one would argue that the city governments have no role in their citizens' cable television system. However, it is not always easy to determine what is in the public interest. For example, is it in the public interest to keep taxes artificially low to the point where the local school system deteriorates? Is it in the public interest to keep the price of bread well below production price until there is no more bread on the supermarket shelves? I think we would all agree that the answer is "No."

Unfortunately, politicians at all levels are under heavy pressures to do things which might bring short-term benefit to constituents, but cause long-term grief. No one that I have ever encountered wants to pay more money for anything. Human beings, by their very nature, would love to find the truly free lunch. You and I know that certainly doesn't exist.

I use this rather roundabout way of leading into the question of whether city governments should regulate cable television rates. The answer, I believe, is "absolutely not." It serves no useful purpose but it does invite the sorts of pressures on local elected officials which I have been discussing. By giving itself the authority to regulate cable TV basic subscriber rates, cities invariably risk abuse of that power. When a politician is faced on the one hand with subscribers who do not want to pay more money—who would—and with a single cable operator on the other hand arguing that the financial viability of his company depends on a higher rate, who is likely to win regardless of the facts of the situation?

Leaving aside the political difficulties of rate regulation, the basic question has got to be: Is it needed to protect the public? Some cities argue that rates need regulation because cable is a monopoly; but is it really?

A cable operator may have the only cable system in town, but it is unlikely to be the only source of entertainment and information. There is over-the-air television. Government does not regulate their advertising rates. There are newspapers. Their rates and price are not restricted. There are movie theaters, and I have yet to see a movie theater where the government regulates the ticket prices. In many areas cable television is lucky to sign up one of every two homes it passes. Hardly a situation which allows monopolistic pricing practices.

Even in areas where cable penetration is high, there is little incentive to overcharge for basic rates.

Now, Senator, we definitely know the economic boon that our county and Hobbs has been experiencing over the past 4 or 5 years. And, of course, this is in my own area, my own system. For example, 75 percent of the homes our cable passes are subscribers, yet we have not raised basic rates of cable since April 1, 1978. That's almost 4 years ago, and 40 percent inflation ago. And believe you me, we could have done it. For the fact that we are not regulated in Hobbs. Why aren't we taking advantage of this situation? The answer, of course, in economic terms, is that cable is very price-sensitive. Raise the price too much and the number of subscribers goes down, and we, of course, would end up with less money.

Understand that a cable system is very capital intensive. Debt service, especially for the newer systems, it's extremely high in proportion to our expenses. In terms of capital investment, it probably costs up to 98 percent as much to pass a home which doesn't subscribe to cable as it does to pass and serve a home. The only difference is the cost of the drop cable into the house. It is, therefore, in our best interest to service the highest percentage of homes we pass as possible. We cannot accomplish that goal by pricing our basic product too high.

As pay services become larger in our business, we have an incentive to underprice the basic cable service. Why? Why do we do this? Simply because we cannot offer pay services until and unless a family is a basic subscriber first. A good example of this is in Boston where I understand that a company with the franchise there will offer basic service at less than $3 a month, a rate far, far below the actual capital cost of building the system.

In summary, then, I believe government regulation of basic cable rates are unnecessary at best, and dangerous at worse. Cable operators have no incentive to price themselves out of the market, yet municipal officials can cause great economic hardship by delaying or refusing rate increases which simply cannot be avoided.

Moreover, the national interest is not served. I have no doubt that the U.S. Senate favors a healthy, growing, state-of-the-art cable television industry as part of an overall communications network. However, the vast sums of capital needed to do this will become harder and harder to attract as more and more lenders see cities adopt artificial restraints on cables' ability to earn the income needed to repay that debt. If carried to its logical conclusion, regulation may result in lower basic cable rates, but those lower rates will be buying lower quality communications services. Under these circumstances can we really say that the public interest will be served? I think not. Absolutely not.

I would like to make one final point. I have been very fortunate in that my relationship with the city officials of Hobbs has been excellent, and I plan to do everything in my power to keep it that way. I in no way intend my criticisms of some cities to indict all cities, least of all Hobbs. Nonetheless, there are problems, and serious problems, facing cable operators in large cities and small towns across this country, and I feel it is my duty as president of the New Mexico Cable Television Association, as well as my membership of our national association, to speak out on these issues, even if they do not confront me directly, though they do confront the cable TV industry.

[The statement follows:]

STATEMENT OF TOM STAUBITZ, PRESIDENT, NEW MEXICO CABLE TELEVISION ASSOCIATION

Good afternoon Senator Schmitt. My name is Tom Staubitz and I am President of the New Mexico Cable Television Association. Our members serve over 150,000 subscribers in the state of New Mexico.

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The focus of my remarks this afternoon will be on the regulation of subscriber rates by municipal governments. The cable television industry is unique in that it is subjected to municipal regulation in addition to already existing federal regulation. Unfortunately these layers of regulation do not always mesh and the resulting situation is often one in which it is extremely difficult for the cable operator to provide subscribers with optimum service.

No one would argue that the municipal governments have no role in their citizen's cable television system. However, such local governments must never lose sight of their *raison d'etre*, which is to serve and protect their citizen's best interests.

However, it is not always easy to determine what is in the public interest. For example, is it in the public interest to keep taxes artifically low to the point where the local school system deteriorates? Is it in the public interest to keep the price of bread well below production price until there is no more bread on the supermarket shelves? I think we would all agree that the answer is "no."

Unfortunately, politicians at all levels are under heavy pressures to do things which might bring short-term benefit to constituents, but cause long-term grief. No one that I have ever encountered wants to pay more money for anything. Human beings, by their very nature, would love to find the truly free lunch. You and I know it doesn't exist, but we all continue to search nonetheless.

I use this rather round-about way of leading into the question of whether municipal governments should regulate cable television rates. The answer, I believe is "no." It serves no useful purpose but it does invite the sorts of pressures on local elected officials which I have been discussing. By giving itself the authority to regulate cable television basic subscriber rates, cities invariably risk abuse of that power. When a politician is faced on the one hand with subscribers who do not want to pay more money—who would—and with a single cable operator on the other hand arguing that the financial viability of his company depends on a higher rate, who is likely to win regardless of the facts of the situation?

Leaving aside the political difficulties of rate regulation, the basic question has got to be: is it needed to protect the public? Some cities argue that rates need regulation because cable is a monopoly; but is it really?

A cable operator may have the only cable system in town, but it is unlikely to be the only source of entertainment and information. There is over-the-air television: government does not regulate their advertising rates; there are newspapers: their rates and price are not restricted; there are movie theaters; does the city set the ticket price? In many areas cable television is lucky to sign up one of every two homes it passes—hardly a situation which allows monopolistic pricing practices.

Even in areas where cable penetration is high, there is little incentive to overcharge for basic cable services. In my own system in Hobbs, for example, 75 percent of the homes our cable passes are subscribers, yet we have not raised basic cable rates since April 1, 1978—almost four years and 40 percent inflation ago—and the city of Hobbs has no cable rate regulation whatsoever. Why aren't we taking advantage of the situation? The answer, in economic terms, is that cable is very price-sensitive. Raise the price too much and the number of subscribers goes down; we would end up with even less money in the end.

Understand that a cable system is very capital intensive; debt service, especially for the newer systems, is an extraordinarily high proportion of our expenses. In terms of capital investment, it probably costs up to 98 percent as much to pass a home which doesn't subscribe to cable as it does to pass and serve a home; the only difference is the cost of the drop cable into the house. It is therefore in our best interest to serve the highest percentage of homes we pass as possible. We cannot accomplish that goal by pricing our basic product too high.

Indeed, as pay services become a larger part of our business, we have the incentive to under-price the basic cable service. Why? Simply because we cannot offer pay services until and unless a family is a basic cable subscriber. A good example of this is in Boston where I understand the company with the franchise there will offer basic cable at less than $3 a month—a rate far, far below the actual capital cost of building the system.

In summary, then, I believe government regulation of basic cable rates are unnecessary at best, and dangerous at worse. Cable operators have no incentive to price themselves out of the market yet municipal officials can cause great economic hardship by delaying or refusing rate increases which simply cannot be avoided.

Moreover, the national interest is not served. I have no doubt that the United States Senate favors a healthy, growing, state-of-the-art cable industry in this country as part of an overall communications network. However, the vast sums of capital needed to do this will become harder and harder to attract as more and more lenders see cities adopt artificial restraints on cables' ability to earn the income needed to repay that debt. If carried to its logical conclusion, regulation may result in lower basic cable rates but those lower rates will be buying lower quality communications services. Under these circumstances can we really say that the public interest will be served? I think not.

I would like to make one final point. I have been fortunate in that my relationship with the city officials of Hobbs has been excellent and I plan to do everything in my power to keep them that way. I in no way intend my criticisms of some cities to indict all cities, least of all Hobbs. Nonetheless, there are problems, serious problems, facing cable operators in large cities and small towns across this country, and I feel it is my duty as President of the New Mexico Cable Television Association as well as my membership to our national association to speak out on these issues even if they do not confront me directly.

Senator SCHMITT. Thank you, Tom. Mr. Mayor—Mayor Kinney, would you like to give us the benefit of your insights?

STATEMENT OF MAYOR KINNEY OF ALBUQUERQUE, N. MEX.

Mr. KINNEY. Thank you very much, Senator. I appreciate this opportunity to give my viewpoints in regard to cable and television within Albuquerque.

I am Harry Kinney, mayor of the city of Albuquerque. Since the question of cable regulation is being brought before the Congress of the United States, I certainly appreciate this opportunity to discuss the subject from the point of view of our city.

I think that cable television has a real problem in that it is a prime example of what has been called future shock. The business has changed so much and so rapidly in the past several years that the public is caught flatfooted, and their elected officials are hard pressed to make reasonable judgments as to how to handle it.

I can remember back in 1967, 1968, when we were talking about cable TV, the first negotiation of contract. Most of our citizens said, "You are crazy. Nobody is going to want cable. We have already got four stations here." And it certainly has changed.

Cable television is no longer a simple community antenna system, but that is probably how it is thought of by most of our citizens. But the fact is that today's cable capabilities have about the same relationship to a community antenna as the home computer has to an adding machine. So what will we do with it?

Although I have been involved in the cable situation in Albuquerque since its beginning, I cannot devote the time needed to keep up with the industry. I will not discuss the technical end in this testimony as there are people who are much better qualified.

However, in light of the fact that the cable systems can now pull transmissions direct from orbiting satellites, can provide over 100 channels, if desired, can operate two-way systems for information exchange, security services, their impact will be enormous. Since cable systems use local rights-of-way to bring their service to people, the problem of regulation becomes that much more complex from a policy point of view. It is regulation at the local level which I will address today.

As with so many of our support systems in this country, cable has pretty much "just happened." If the future were as clear as the past, these problems wouldn't exist. New Mexico has always acknowledged this natural evolution of things. Our State motto refers to New Mexico by saying, "It grows as it goes."

Yesterday's regulations don't fit today's situation.

Different areas have developed widely varying regulations. The Federal inclination is usually to move toward regulations which are uniform and consistent. The current inconsistencies are provoking a demand for Federal solutions. The rules governing clear broadcast communications will not be adequate for governing cable operations.

We seem to be torn at this point in our Nation's history between wanting the safety, comfort and predictability of Federal management and the desire to handle local problems without external interference. Cable TV is clearly large and complex enough to need both. I will always stand behind local regulation of those matters which can best be handled locally.

Like the telephone, gas and electric companies who operate in this area, the cable company or companies, as the case might be, use public rights-of-way. This gives the city very broad power to invoke controlling the users of rights-of-way. However, several factors in the cable business make the need for more comprehensive and consistent rules quite clear.

First, the operation of a cable system usually leads to a monopoly situation out of financial constraints. This will be dependent on the size of the communities to some extent, but, generally speaking, duplication of facilities tends to increase the cost of competing companies. Monopolies are removed from usual market pressures and require special rules.

Second, cable is showing signs of having so many things to offer the public that it may be deemed an essential service in the future. If people have home security systems wired into the cable or the elderly have check-in provisions to monitor their health and safety through the cable, this may well fit the definition of essential sooner than we might think. Once a service is deemed essential, the Government has a greater responsibility to make certain that the obligations assumed are carried out consistently.

Third, the cable industry ownership is concentrating in the hands of a few, and this power demands an adequate set of checks and balances. That is a notion so integral to our country that it needs no further explanation on my part.

As to just what local controls I am talking about, there are several. What we have tried to accomplish in our franchising agreements in Albuquerque is the orderly expansion of the cable system to provide access to 80 percent of the residents by September 1, 1982. The contract specifies that reasonable improvements in the system be made, and that we will oversee the operations. The city must be assured that rates are reasonable to both the cable comapny and the consumer of the services.

We currently have a committee reviewing the state of the art in cable television services, as well as the stipulations of recent franchise agreements. There will be a thorough evaluation of both before any report is submitted to the city council and this administration.

Until that report is submitted and reviewed, I will not venture any opinions as to what will happen here in Albuquerque with cable television beyond what is happening right now. As the range of cable services has broadened, the potential for profitable operation is perceived as having expanded. Some very interesting agreements are being negotiated, but until we see some of them in operation, we won't know just how the economy will respond actually rather than theoretically. At this point, we don't feel pressed to seek additional local legislation. With regard to Federal controls beyond those we feel might be necessary to deal with the concentration of power in the industry into the hands of a few, we think some additional control mechanism would be useful. To us, this is no different than seeking legislation which would prevent the New York Times or the Albuquerque Journal, for that matter, from becoming the only newspaper available in the country.

We definitely do not want further limitations on local control. This appears to be an industry aim in some parts of the country, and we absolutely disagree with any rulings which would limit the present powers of State and local government to regulate businesses in the local area.

In the event our committee here finishes its work and submits a report which further defines this issue, I would like the opportunity to submit it to your committee for consideration in pending cable legislation attempts.

Senator SCHMITT. Mr. Mayor, that will be possible, and we will accept that as an addendum to your testimony.

Mr. KINNEY. Thank you very much. I have one closing statement.

In closing, I can only state that I sincerely hope the almost unbelievable promises being made as to the future of cable come to pass. I think we should consider the promise that commercial television offered and reflect on the extent to which those hopes and dreams have been realized before we become overly excited with our new cable tool. Any system is only as good as we make it.

Thank you. We appreciate this opportunity to appear before you, Senator.

Senator SCHMITT. Thank you, Mr. Mayor. And we appreciate you being here this afternoon.

One of the difficulties I think that the Congress has had in grasping the problem of broadband communications, and which we tend to call cable, but it's really much more than that, is what is the case for regulation?

You have made a case that because cable, as one means of broadband communication, needs the rights-of-way that the city controls, and then, therefore, there should be some level of city involvement in the regulations. Now, I am not sure that if I left it at that, that there would be much disagreement here, some level. The disagreement is over what that level is and what the details of it may be.

If you look at cable as cable alone, then it's generally, I think, clear that there is a local monopoly characteristic. The economies of scale generally will not support two cable systems, at least not at this time.

But if you look at cable more broadly and say, "Is it a monopoly," in terms of the provision of services, or the capability to provide services, I guess the answer generally would be, "No."

Unless you reach a point and define a service, maybe a security service, or something like that, where there really is no other option to the subscribers.

However, even there, one can make another option. Nationally, if the consent decree that's been proposed goes through, and the local operating companies are entirely separate, divested from the major portions of A.T. & T., they, in a sense, become a cable like entity that has the opportunity to provide almost any services with—in some cases requiring rewiring—but any service that a cable system might provide.

In the entertainment area and in other information services, not only is there currently over-the-air broadcasts, but the direct broadcast satellite is something that comes in without using city rights-of-way, just a roof antenna, and you start to see again and elimination of some of the monopoly characteristics that cable might otherwise have.

And then, finally, cable is not just local. It is receiving programing now, many cable systems, from a national network, or two, or three, or four, that is growing.

So what I am getting at here, can any of you offer me some insights into how we grasp this tar baby that we have in our hands, which is in reality broadband communication, but which our debate has tended to focus on as cable, all of us knowing full well that lurking out here in the distance are a whole bunch of broadband communication systems that may use existing or modernized phone lines. It may use direct broadcast, it may use any number of technologies in order to reach the consumer, with a variety of services.

I haven't answered any question for you, but I would like to have some discussion of this issue of, really, cable as a monopoly and to what degree is it a monopoly, because that, in a sense, is in the long run going to define to what degree do local municipalities have a local responsibility for regulation, and in the degree that it's providing a national common carrier service, that will define the degree to which there is national regulations of cable or other forms of broadband communication.

Who wants to raise their hand first?

Mr. DITTRICK. I will start if you want. I think part of our problem is that we tend to, as you have said, identify all broadband communication with one word, cable. And, in fact, cable is tarred at various times by various people who are protecting their own vested interests and turf protecting. Now, that doesn't go on, obviously, by anyone at this table or any of the industries here. But that has happened, and I think what we see is that cable—we provide service to one out of three homes in Albuquerque which we pass. I don't consider that to be a monopoly.

I would suggest to you that the statement made that there probably economically can only be one cable system here is— and that's because of the extremely high capital investment dollars that are required. So that the cable company is not making a huge profit as sometimes is characterized, certainly operation here in Albuquerque, by operating that system when it's providing service to only one out of three homes.

Senator SCHMITT. But you are really a new industry, and the potential for growth——

Mr. DITTRICK. Well, but we started 30 years ago when the broadcasting started.

Senator SCHMITT [continuing]. But the potential for growth and the kinds of service that can be offered, and the activities to consumer is great, so that may change in time.

Mr. DITTRICK. But many people will say—we provide service now to 20 million homes in this country. That's 20 out of 90 million homes, I assume is the number, and are more optimistic projects, such as the one you might have seen dealing with 1991. Talking about 40, 45 million homes, which, again, I suggest is 1 out of 2 homes. Now, there are various reasons that most people say it won't get much larger then that, but I think when you talk monopoly what you look at is, our problem in cable is that because we have an opportunity, because of the broadband with which you are working with to provide different services, everybody can take a crack at that. But each one of those services is competing.

You mention security. You can provide a security service, and they are provided today through telephone lines, through two twisted pair—you can do it through cellular radio. There are all kinds of options to providing that. Certainly it is one option that a cable system might be able to do because of the intelligence capability in the cable.

The same with the distribution of the entire Nation.

Senator **Schmitt**. Do you think there ought to be any limitations within that? Should phone lines and cellular radio and cable all be allowed to offer that service?

Mr. **Dittrick**. As far as we are concerned we are competing with them, and we are prepared to compete with them. To your specific points—and I am not an expert on the A.T. & T. settlement—but I believe what should be done is, it ought to be done in Congress and not through a court settlement. So that whatever happens, I believe that the Congress should take affirmative action to set this thing up.

Senator **Schmitt**. Well, I couldn't agree with you more, but let's assume that that's a tough yoke.

Mr. **Dittrick**. Sure it is.

Senator **Schmitt**. It's easier for Assistant Attorney General Baxter to negotiate a decree that the court may even accept than it is for us to get a bill through both Houses of Congress and signed into law. It's just a fact of life.

Now, I am certainly personally dedicated to a very, very intensive review of this consent decree, and the implication on a variety of issues, not just this one, but national defense and the technology growth of the country, vis-a-vis competitors we may have abroad.

Be that as it may, I don't know when we are going to actually get the Congress to take a stand, and knowing the impact of a total divestiture of 22 operating companies, which is the extreme case of the consent decree, it may be anything less than that. The effect of that in the broadband or cable industry is something we need to know about, because it does change the picture over what we had before.

What the Congress was considering, at least the Senate was, that the A.T. & T remain the operating companies and have to create separate wholly-owned subsidiaries, but still they are independent subsidiaries in any other area they wish to compete in. And they were going to be barred from certain types of information services.

But Mr. Baxter has found the only part of the field no one else wanted to occupy, and he's decided to occupy it, and that has changed things greatly. And we need your input, not necessarily here today, but I hope that you will provide that to us as we quickly—as we further examine this issue.

Mr. **Dittrick**. We have tried through the national association, and I think that you have already set the stage for some of this. Certainly in the Senate in the past year you have had hearings, you have taken some action in the House, and so over the past 2 or 3 years some work has been started. So I don't think it's impossible, but it does then cover a whole range of subjects, and cable is a very small part of that. So I don't want you to think that we are——

Senator **Schmitt**. Well, it may be a small part now, but one of the reasons that I got the committee into this business of a full-fledged examination of the 1934 Communications Act is because literally it was broadband communications, the revolution in technologies of broadband communications that has changed the whole world. If there was no such thing as broadband communications, we could still regulate through the FCC and the 1934 act without any significant changes. We really could. And that is what has upset the applecart.

And even though you are sitting here today and saying you are not—it's a very tough industry, and there's a low profit margin, and this sort of thing. In reality, the future is wide open to broadband communications. And that what we have to do in the Congress is make sure that that future is open so the consumer receives all the benefits of that particular local revolution through as competitive an environment as we can possibly have, without destroying any of those benefits.

It's tough. I don't' have the answer.

Mr. DITTRICK. It's a tough balance, but obviously it was started, as far as our business, in 1975, when "Sat-Com" went up and we bounced a signal off of it, and all of a sudden we got a lot of attention and notoriety and have grown since then. But that has caused a problem.

Senator SCHMITT. Mr. Mayor, did you have a comment on this monopoly issue?

Mr. KINNEY. Of course, cities are involved as long as cable is used, coaxial cable. And 10 years ago it was thought that the—there was so much engineering and physics advantages to the coaxial cable that it would be very important for everyone. But there are indications that with just over-the-air communications, the cities will not have inherent power to govern it. And also the capital cost could end up very low in comparison to what we are doing now. And the Federal Government will, of course, have control because of the broad span of coverage that the various over-the-air communications would do.

Senator SCHMITT. Implicitly, in your words, then, sounds like that the cities must be very careful if they expect to have the benefits of cable, financially and otherwise. Not to overregulate or the cable industry then would disappear in favor of other forms of providing the same kind of services which have already been discussed.

Mr. KINNEY. Yes, and I think it's important the cities encourage the two-way capability that coaxial cable has, the over-the-air problem may not have. I just can't quite see the security system from the home bouncing up off a satellite. Maybe it will, but the capital requirements would be sort of high, so I think we have to——

Senator SCHMITT. Well, I tell you, Mr. Mayor, it's not very far away. A large antenna in space with small antenna on the ground goes both ways.

Mr. KINNEY. Well, yes, but—maybe.

Senator SCHMITT. And they are marketing—the Japanese are now marketing a small antenna at less than a $1,000 apiece.

Mr. KINNEY. For receiving, when you start, I think from my knowledge—when you start trying to transmit from every home——

Senator SCHMITT. All I am saying, there is a bunch of elk wandering around with a transmitter on them that is going up to a satellite, a problem we in this generation cannot grasp what it is going to be like just 10 years from now. When Thomas Jefferson was alive, he could predict with reasonable accuracy what was going to happen in 10, 50 years what conditions of life his children would have. We can't do that anymore. And the reason we got in this mess, in 1934, the Communications Act, we didn't predict 10 years ago when we should have and act responsibly through legislation, and now we are really playing catch up, and nobody really knows how to do it. Anybody else?

Mr. **Sklower**. I will make a couple of quick statements regarding the city and cable as an outsider, since I am not involved in the relationship like the cables with the city. But I think that the cable is entitled to any profit that they make. If they offer the service, the public wants to pay the profit, they should be entitled to a profit. If the city tries to charge too much for the franchise fee, more than what they are putting into regulating, by watching the wires on the municipal poles, and things like that, the price is going to be passed on to the consumer. Or, as Mr. Staubitz said; the cable goes under.

From that standpoint, there is nothing wrong with the cable happening and making profit. Like you said, they put in a lot of money, and they are entitled to a profit. The public is willing to pay it, the public knows what they are willing to pay for almost anything. And if they are not willing to pay for it, they won't.

Senator **Schmitt**. Mr. Barshov, what do you consider basic service?

Mr. **Barshov**. What I understand, in my interpretation of basic service, is the rebroadcast, if you will, of the items that are provided free of charge to all citizens through their regular TV set and antenna. So when they rebroadcast network television that's available over the air that you can get anyway, that's what I consider to be the minimum basic service.

Senator **Schmitt**. Should that include dedicated access channels?

Mr. **Barshov**. No, I don't believe so. I think that my initial feeling would be is that the municipality—the cable company should be able to determine what charge it needs to get in order for it to have a specific channel set up for local access. But I am talking about the cable company calculating that it has to spend so many—so many dollars for wire and bring in the same stuff that you can get over your regular TV set. Now——

Senator **Schmitt**. Well, but then you would not include the initially originated cable services——

Mr. **Barshov**. No, I would not.

Senator **Schmitt** [continuing]. As a basic service?

Mr. **Barshov**. That's right, I would not. And that may be—let me——

Senator **Schmitt**. Distant signals?

Mr. **Barshov**. Yes. Let me put it to you this way, Senator. My feeling is here, that the reason that a negotiated fee—and that's what it really is—the city is not imposing anything on the cable company. The cable company can just say, "Go peddle your papers, city, we don't want to do it here. It's not going to be in our self-interest." At which point the city is going to have to justify that to its own citizens.

So what we are talking about here is some sort of negotiating arrangement whereby the public interest, in terms of reasonable fees is met. And I agree with the remarks made by Mr. Staubitz, because I think there is a market analysis and rationale for keeping base rates low. I don't think that in any way questions the intelligence of a municipality getting involved to insure that. As a matter of fact, it only lends justification that the two goals are not antagonistic to one another.

And, Senator, in response to some of the questions that you raised earlier, I would change one assumption that you make. I don't believe that the regulation comes from the use of the rights-of-way. What that really is, is the legal mechanism that allows the city to get involved in the picture. OK?

But the real basis for the regulation comes from the fact that the municipality has to be concerned with protecting the public's interest, and that public interest is getting the widest amount, the most highly diverse amount of cable programing and on the state of the art technology as is possible.

Now, by mandating that the cable company extend to certain portions of the city by mandating certain state of the art technology changes, a municipality can do that. In reality, Senator, there are other mechanisms for a city if you wanted to make life difficult for a cable company, but they don't want to. There's also regulations, all kinds of stuff that a municipality could do if they wanted to make the life difficult.

The fact of the matter is, to my perception, most municipalities recognize the fact that they need a cable to come in there. They want to attract residents to a community, and a cable company is a very, very strong addition to the attractability of a given city. On the other side——

Senator SCHMITT. Let me interrupt there. I am a little bit concerned that your definition may have gotten overly broad, because if we followed that to its logical conclusion, the cities would regulate television, they would regulate the entry into city regulations, city use of city public-owned facilities, in order to provide the signal. Now, there is the political rationale that's technically rank; the political thinking is that people are demanding service such that cable can provide, and also that if you overprice that service, you will lose it and lose the revenues that come to the city as a result.

Mr. BARSHOV. I don't believe that's happened very frequently.

Senator SCHMITT. I would be very careful, as a friend of the court here, in using the rationale that you are regulating, because it's a public service. I think that—I would be very careful of that because suddenly municipalities can be subject to regulation.

Mr. DITTRICK. Municipalities?

Senator SCHMITT. Municipalities.

Mr. BARSHOV. What I am saying, to give you astutely as possible, it's true that the actual use of the rights-of-way gives you the open door to come in and regulate something, but the city is doing it for the purpose of trying to protect its citizens and provide for services to the citizens now.

Senator SCHMITT. And to make money.

Mr. BARSHOV. And to make money. There is no doubt about it. But the bottom line is that not everything that the city would like to get involved in, it can. And maybe some cities want to get into having regulation of the companies. But, obviously, they could not. But whether they come in and use the city's rights-of-way, it does give the city the opportunity to take the step forward to make the life of its citizens better.

And what I am trying to say is, that there is nobody else out there who is going to do it. The State and Federal governments have pretty well said, "We are not going to get involved in this thing."

Sentaor SCHMITT. No; I would have to disagree. The Federal Government has not made a decision.

Mr. BARSHOV. Well, as far as the in——

Senator SCHMITT. We wouldn't be here today if the Federal Government had entirely decided to turn its back.

Mr. BARSHOV. Well, Senator, my appreciation of this is that if the Federal Government is going to get involved, they are going to get involved on the terms you stated earlier, on the terms that we are a broadcast carrier.

Senator SCHMITT. I wouldn't make any strong assumptions one way or the other about what the Congress is going to do. Certainly can't predict it.

Mr. BARSTOV. I can't predict it either, but that's the only indications I have gotten up to now. I would be happy if the Federal Government took a stand saying that municipalities—there's a need for regulation, there is a need for protecting the community interest, and that is appropriately to be exercised by the municipalities since they are the ones who know what their community interest will be. But in all the drafts of legislation I have seen, I haven't seen it stated that way.

Senator SCHMITT. But let's face it——

Mr. DITTRICK. Where we are today, the FCC has said it, and that's where we are operating from, so we are creating a new kind of thing.

Senator SCHMITT. But the FCC and the courts have been operating in a vacuum. And Congress, for several years now this committee has been trying to step in and force the Congress to establish policy guidelines that represent the will of our constituents, and it's a tough job to do, but we are a lot farther along now than we were 4 or 5 years ago.

Mr. BARSHOV. And we appreciate, especially the Municipal League, the opportunity to come forward and express to you the fact, as far as I know, without exception, every single municipality that has a cable system, they are really glad they have that cable system in there.

But there is a balance to be struck, that everybody has said implicitly, and that balance is between competition and providing service. And what Municipal League, and I think the National League of Cities feel quite strongly about, as well, is the competition to obtain a franchise from a municipality is the best way to insure that there is open competition, as well as service to the public. And I think that's where the Congress should draw its policy statement from.

Senator SCHMITT. OK. Now, let me ask one more question. Then we must move on to our next panel. It has to do with privacy, but we—definitely in a two-way capability in cable television there will be the issue of privacy.

Tom, would you like to address that, and how you feel we ought to deal with that? You see what I am talking about, that information that might be generated in the home going back to a central point, and in referring to that, it is a valuable information to those people who would like to market to people who vote one way or the other. See what I am saying?

Mr. STAUBITZ. About the only one I could speak of, and this is by reading the newspapers and various magazines, would be the two-way system in Columbus, Ohio, that seems to be a workable system. I believe knowing President Carter's administration, appears to me one of his national speeches they took an opinion poll dealing with the economy, whether the people agreed or did not agree. And, of course, it was very responsive.

Senator SCHMITT. But that's valuable information?

Mr. STAUBITZ. Yes.

Senator SCHMITT. That's private information. The individual subscriber's reaction to that survey is valuable information to certain political or business interests. Even more strictly would be home finances, two-way financing services.

Mr. STAUBITZ. Two-way financing, grocery shopping, shopping, et cetera, what have you. And I see no reason why it would not be a workable system.

Senator SCHMITT. But do we need to have a privacy regulation built into this thing in order to protect the consumer from intrusion into their own personal interests, based on how they choose to react to two-way in a cable system?

Mr. STAUBITZ. Again——

Senator SCHMITT. Doug?

Mr. DITTRICK. The cable industry already indicated in Washington that we are fully prepared to do that. We suggested that there are some parameters that you should consider. That is the 90-million-home universe, and probably about a 20,000-home universe now on two-way. But we are fully prepared to have appropriate safeguards, such as might be involved in the telephone industry, to protect the same kind of thing, illegal monitoring or building a data base. Most cable companies are now beginning to draft home internal policy statements to be used for that.

Our concern at the national level has been, is now the right time to be starting that standard when it's not there yet? But I think we are totally prepared to work within that framework, and think it's a valuable thing at the appropriate time.

Senator SCHMITT. Well, I am afraid that the appropriate time is coming pretty fast, because it's an issue that's been raised, and your insights will be very helpful to us. Max?

Mr. SKLOWER. I would like to make one short statement dealing with——

Senator SCHMITT. All right.

Mr. SKLOWER. I know it's been the intent of Congress, and the intent of the FCC to provide—let me use the word supply—to supply a lot of signals available to the public as that's what we are talking about. And I think that's a good thing. It's been mentioned that sometimes people try to protect their own turf. One thing that the broadcasters are definitely wanting to protect is interference.

It's wonderful to have all of these frequencies, but let's make sure that they don't interfere with some other existing service or you will just wipe out the benefits of the multiplicity of the services.

Mr. STAUBITZ. Well, I have just one last comment. In bringing in what we call distant signals, foreign signals—for example, we carry the Atlanta station in Hobbs. I think good programing that we bring in from the Atlanta station keeps the local stations—off air stations—that we carry, such as Max's station, on their toes to provide better programing.

Senator **Schmitt**. Max, the record will show you shook your head.

Mr. **Sklower**. The reason I shook my head is the particular station that he referred to has about an eighth share of the home market in Atlanta, so it could not be doing a good job, or it would have gotten a better than an eighth share. So long as they are not duplicating the programs that I am required to pay a horrendous price to carry; no, I don't mind their being carried.

Senator **Schmitt**. Gentlemen, I want to thank you for frank testimony, helpful testimony, and we may be in touch with each of you with some follow-up questions.

Our next panel is Frank Murray, mayor, city of Clovis; Ed Pena, Grants Cable TV; Robert M. Harris, executive vice president and general manager, ENMR Telephone Cooperative, Inc., Clovis, N. Mex.; Ray Polvadore, president, Rocky Mountain Cable Association, vice President, New Mexico Cable Association, Bernalillo, N. Mex.; and Carl M. Turner, executive manager, New Mexico Rural Electrification Cooperative Association, Inc., Santa Fe, N. Mex.

Now, we will try with this panel, if we can, to keep you to the 5-minute limit on testimony so we can have a little more time for questions.

It's not necessary to read your testimony. If you can summarize it, it will all be in the record as if read.

Our first witness, Mr. Murray.

STATEMENT OF FRANK A. MURRAY, JR., MAYOR, CLOVIS, N. MEX.

Mr. **Murray**. Senator.

Senator **Schmitt**. How have you been doing?

Mr. **Murray**. Fine, sir. How have you done?

Senator **Schmitt**. Great.

Mr. **Murray**. Senator, when I came here I was not prepared to address the question of broadband communication aspect, but only cable television, which relates to inter——

Senator **Schmitt**. That's what we expect, but we have to keep it in some context, because it will interact with what the committee does in these other areas.

Mr. **Murray**. Right. OK. I would address the following questions on this subject.

Should cable television services be regulated; and if so, in what way and by whom?

Whether or not they should be regulated should be a matter of negotiation between the cable television company and the local governing body, without interference from the Federal Government. And I say this because the local governing body is more responsive to the needs of the local citizens. And, conceivably, each local situation would vary in scope and content.

Question No. 2, in what manner should Congress limit the authority of local government to limit basic cable subscriber rates?

The Congress should not limit the authority of local government in any way. In establishing subscriber rates, this should be a negotiable matter between local government and the cable television industry. Local government is more responsive to local need.

Question No. 3, should the Federal Government limit in any manner the franchise fees paid to States or cities by cable television companies receiving franchises from local government?

Again this should be negotiated between local government and the cable television industry.

Question 4. Should the Federal pole attachment law be broadened to include poles owned by cooperatively organized telephone and power utilities and government-owned utilities?

And my answer is "No" on this. But I would qualify it by saying I don't mean the co-op and government-owned utilities couldn't carry the cable television. And I say that these things should be negotiated between the company, the co-op, or government-owned utility, based on the needs of the community.

Question 5. Should municipalities be prohibited from owning or operating a cable television system?

Generally the answer would be "No," but I would qualify that by saying that there are many smaller communities who are not economically situated so that a private company could come in and give them service. Under those situations, if the citizens of that community so desired, then they could put in their own system.

Senator SCHMITT. Would you establish a limit there, Mr. Mayor, on the size of community?

Mr. MURRAY. That's hard to do because of the situation. My general philosophy is that government should not get involved in any type of business that can be handled economically by private enterprise. That's a broad statement, but when you say "what size community," it's hard to say. Maybe your delving into this could come up with that answer.

And in summary, I would leave the regulatory authority of this nonessential commercial business to local governing bodies. This industry, unlike public utilities, an an optional luxury left to the individual consumer's personal decision, to buy or not to buy. If the people are not satisfied, they always have the option of voting local authorities out of office and replacing them with responsive officials. In this age of burgeoning Federal deficits we do not need unnecessary Federal regulations and Federal bureaucracies to enforce them. Realizing, of course, that the propagation and origination of the broadcasts involved have to be controlled at the Federal level to prohibit the uncontrolled proliferation and contamination of the airwaves.

That concludes it, Senator.

Senator SCHMITT. Thank you, Mr. Mayor. Let me ask one other question before I go on to the next witness. And that is, is there any inconsistency between your statement that the industry is an optional luxury and small communities should have the authority to own that luxury if it is not economical?

Mr. MURRAY. That would be up to the small community, if that's their decision. In other words, a number of services are paid for out of tax dollars that the community receives. And I know in our community we have to subsidize even to the extent of solid waste disposal, that sort of thing, out of tax revenues, because the rates do not generate the revenue to cover it.

Senator SCHMITT. Well, what I am getting at, I don't think solid waste disposal can be thought of as a luxury. Maybe it was a half century ago.

Mr. MURRAY. No, you are correct there. But I believe it's something that you don't have to have, and you have that decision.

Senator SCHMITT. You are saying if the people of the community want the city to do it, they ought to be allowed to do it?

Mr. MURRAY. Right.

[The statement follows:]

STATEMENT OF FRANK A. MURRAY, JR., MAYOR, CLOVIS, N. MEX.

I would address the following questions on the subject of deregulating cable television services:

Question 1. Should cable television services be regulated; and, if so, in what way and by whom?

Answer. Whether or not they should be regulated should be a matter of negotiation between the Cable Television Company and the Local Governing Body without interference from the Federal Government.

Reason. The Local Governing Body is more responsive to the needs of local citizens, and conceivably each local situation would vary in scope and content.

Question 2. In what manner should Congress limit the authority of Local Governments to limit basic cable subscriber rates?

Answer. Congress should not limit the authority of Local Government in any way, in establishing subscriber rates. This should be a negotiable matter between Local Government and the cable television industry.

Reason. Local Government is more responsive to local need.

Question 3. Should the Federal Government limit in any manner the franchise fees paid to states or cities by cable television companies receiving franchises from Local Government?

Answer. Again this should be negotiated between Local Government and the cable television industry.

Reason. Local autonomy.

Question 4. Should the Federal Pole Attachment Law be broadened to include poles owned by cooperatively organized Telephone and Power Utilities and Government owned utilities?

Answer. No.

Reason. Government owned and Cooperatives are publicly owned by the people they serve and should be capable of negotiating a reasonable fee.

Question 5. Should municipalities be prohibited from owning or operating a cable television system?

Answer. No.

Reason. Many smaller communities cannot economically support cable television for commercial operation, so if they decide they want the service, they should be free to choose, but I would qualify this statement by asserting the Government at any level should not be involved in an economically feasible commercial enterprise.

Question 6. What can the Federal Government do to assist the local regulation of cable television services?

Answer. As little as possible.

Reason. Local Government is the most responsive to the needs of the people and I feel should be the authority of regulation.

Summary. Leave the regulatory authority of this non-essential commercial business to Local Governing bodies. This industry, unlike public utilities is an optional luxury, left to the individual consumer's personal decision, to buy or not to buy. If the people are not satisfied, they always have the option of voting local authorities out of office, and replacing them with responsive officials. In this age of burgeoning federal deficits we do not need unnecessary federal regulations and federal bureaucracies to enforce them. Realizing of course that the propagation and origination of the broadcasts involved have to be controlled at the federal level to prohibit the uncontrolled proliferation and contamination of the airwaves.

STATEMENT OF ED PENA, GRANTS CABLE TV

Mr. **Pena**. Senator, ladies and gentlemen, my name is Ed Pena, owner of Teleview Cable Television System in Grants and Socorro. I have been in the business for 10 years, and it sort of scares me coming from that era of 10 years ago to where we are today. We have deregulated cable a long ways.

My subject to talk about today is franchising and franchise taxes. I feel sort of bad talking about the subject, because in the State of New Mexico, it is a law that we are trying to pass nationwide. But in the State of New Mexico, we do not have the problems that they have in other parts of the country.

I feel bad because we do work very closely with our municipalities. Our municipalities are small, except for Albuquerque, and I think most people know everybody in the communities, and it's—I don't know anybody in the State of New Mexico that is overregulated by a municipality.

I agree, in part, with the mayor from Clovis, Mr. Murray, that it should be probably regulated in the local level, but I am concerned about that because knowing the State of New Mexico, it is very political. And I am talking about the State of New Mexico, because when I get to small communities, politics creep in, and all of a sudden——

Senator **Schmitt**. It's because everybody knows everybody. You already said that.

Mr. **Pena** [continuing]. You are going to get your head cut off. So cable systems have become very, very expensive. I think—when I first built my first cable system, I think we were paying around $4,300 a mile. Today, they are going for over $10,000 a mile. At 18 percent interest, plus 3 to 5 percent from the city, we are talking in the neighborhood of 2 to 23 percent right off the top that has to go to pay before you pay for any of your investment or anything else.

I am very concerned within our own industry because of the reason of living in rural America, where the big cities offering what they are offering 80 channels, free of charge, and this is coming out of magazines and going for the franchises. What are we going to do in our community when we are trying to sell them 12 channels, when they are getting 80 free someplace else in a big municipality. It scares me in my own industry.

Senator **Schmitt**. Are you thinking in terms of investors, of being able to attract investors into the smaller——

Mr. **Pena**. No. I am thinking about—in terms of that question—yeah, it throws me, because the reason is—yes, I own some small cable systems, and all of a sudden my mayor and councilman read in a magazine——

Senator **Schmitt**. Why didn't you give us 80 channels? What is this piddling 12?

Mr. **Pena**. Why didn't you give us just 12 free? When you have an investment to pay—I don't know when you are talking about—about control of the media in a community, monopolies, is it a monopoly, it is not a monopoly today. We are looking at it as a monopoly down the road when we are going to control the thing. No different than the telephone company, no different than the gas company, no different than the power company.

Because right now we are competing with signals off the air, and that's all we are selling. We are selling signals, we are not competing a two-way system, where we are going to have banking, do grocery shopping, reading of gas meters, reading of light meters, reading of electric meters. Then it is going to be a monopoly.

But right today, I think that we are preparing for that era, and I hope that's what we are doing.

They are talking about putting—probably charging more in areas right now in that deal of charging areas where they are now receiving the three networks off the air and cable systems are coming to exist, that they are charging too much in those areas for the luxury of having cable TV and having television at all.

But the only way that a cable system is going to be built in a small community with 200 or 300 homes, to make it feasible the charge is going to have to be high enough. I don't know of any community in the State of New Mexico that does not receive at least the three networks; I don't know. Because of translators. But——

Senator SCHMITT. We found one about 3 years ago, but we were able to get a translator in there. Gallina did not.

Mr. PENA. I will be darned. But in order—a lot of these communities are so far out that even if they paid $15 and $20 for cable TV, they would pay it because of the reason that's the only form of entertainment. But only to get your money back out of a cable system, you have to charge that, because the cable system is so small. And I know, because of cable systems in Colorado, and I have some in Utah. Smaller systems than I have in New Mexico.

So one of the things that I was going to talk about has already been talked about, and it would be repetition. My testimony will be given, in fact, to the committee.

I am very thankful that I was asked to speak in behalf of the franchise, and I am concerned about the franchising going up too high because of the reason of investors. When you are spending $10,000 per mile—that's in smaller communities—I think we know you have to go underground—you are talking about more than $15,000 or $20,000 a mile when you have to tear out sidewalks. I am talking about overhead.

And then if the city fees become excessive, to 10 percent or 15 percent, over and above the percentage we are paying for money today, it would be unfeasible. And that is one of the concerns that I have.

Other than that, I believe that you are doing a very good job in trying to keep us going here.

Senator SCHMITT. Bob?

STATEMENT OF ROBERT M. HARRIS, GENERAL MANAGER, ENMR TELEPHONE COOPERATIVE

Mr. HARRIS. Senator Schmitt, members of the committee, good afternoon. I am Robert M. Harris, manager of the ENMR Telephone Cooperative of Clovis, N. Mex. I am pleased to have this opportunity to testify here today, both as a manager of a small telephone cooperative and as a representative of the National Telephone Cooperative Association on the question of deregulating cable television.

I want to commend the committee for scheduling a hearing on a matter of great importance to this State. I have written testimony which I would like to submit for the record. I will summarize my remarks in order to save the committee's time.

There are two issues which I would like to address today. First, the extension of Federal pole attachment regulation to cooperatives, an issue which was raised in Senator Schmitt's invitation to testify.

The second issue concerns the need to expedite cable television development in rural areas by encouraging local telephone companies to provide this service. My written testimony discusses the question of pole attachment regulation in detail, so I will just cover this briefly now. NTCA is opposed to extending the present pole attachment law to cooperatives because they think it is not necessary. Federal regulation of cooperative pole attachment rates will impose a substantial burden of paperwork on the cooperatives and on the Federal Communications Commission for questionable public benefit. Since the owners of the cooperatives are the same people that the cable company will serve, there is no incentive to the co-op to overcharge for the use of the poles.

There is not much opportunity for conflict between telephone cooperatives and cable companies. The average subscriber density of the telephone cooperatives is 3.27 per route-mile, where the cable companies use over a density of 30 customers a mile to be viable. Also the use of aerial wires imposed by the telephone systems is declining. Only about one-third of telephone wires in rural areas is aerial now, and nearly all new construction is in buried facilities. The number of bona fide disputes over pole attachment rates is small, and as far as I know no NTCA members have been involved at all.

Finally, adding Federal regulation is unnecessary because telephone co-ops, like all telephone companies are liable to suit under Federal antitrust laws if they unreasonably deny others access to their poles. In addition 21 States regulate pole attachments, and Puerto Rico.

NTCA supports the policy of fostering CATV development because we believe this is important for rural areas. We believe that encouraging independent telephone systems to provide CATV will considerably expedite its development in low density areas.

I think it would be useful to describe the experiences of ENMR to illustrate some of the problems I see in this area. ENMR provides telephone service to 6,045 subscribers at an average density of 0.4 subscribers per route-mile.

Some time ago, ENMR began to investigate the feasibility of providing cable television service in its service area. Off the air television reception is limited. People residing in town could generally receive two network stations and a PBS station which broadcasts nearby. People in the outlaying areas are usually able to watch only one station. Preliminary studies suggested that CATV could be viable in many places within the service area.

We encountered small communities surrounded by low density areas where a cable company had wired the community, and then the people living in the rural area wanted ENMR the surrounding areas. The profit margins on serving the community where the density 40 to 60 per mile were favorable, while those of the surrounding countryside where the density was low were not feasible.

People living in new housing developments were informed that they could not get service until more people moved into the development. Some of these people waited 4 years for CATV.

While our studies had indicated that we could have provided available cable system with density far below what the cable companies claimed as a threshold over viability, we could not have made a viable system from just the low density outlying areas. Had ENMR been able to compete for the franchise in these communities, we would have wired the low density areas as well. At this point, it is unlikely that those outlying areas alone will become attractive to cable developers for some time. Unfortunately these are the areas that most need the service where off the air reception is very unlimited.

This hole of the doughnut approach to designing a service area is a significant problem in rural areas. We will continue to explore the feasibility of providing cable service and have found a number of communities and their surrounding area where we consider a cable system to be a viable project for ENMR.

One major problem that must be addressed is financing. Our studies indicated that at commercial loan rates, the cost of service would be prohibitively expensive. As you know low-interest loans were available to cable operators and telephone cooperatives from the Farmers Home Administration in 1980 and 1981. The program brought CATV 116,000 customers in those 2 years, but it was eliminated in fiscal year 1982.

We were encouraged by the recent FCC ruling granting automatic waiver of the cross-ownership ban for rural areas. We think this action will really open up the doors to foster CATV development in rural areas. Millions of rural Americans still receive less than basic television service. Rural telephone companies have shown, by filing for 187 waivers of the FCC cross-ownership ban, that they are ready, willing and able to provide CATV to these unserved people. We think it is time that all rural Americans have access to the full range of telecommunication services so that they are not left behind in the information era.

With the integration of our electronic switches, communication bases, information for reading meters, and information for various access that are available for providing security, and all the things that have been expressed here today, open it up and let the competition come, and the telephone companies will be there. Thank you.

Senator SCHMITT. Thank you.

[The statement follows:]

STATEMENT OF ROBERT M. HARRIS, MANAGER, E.N.M.R. TELEPHONE COOPERATIVE ON BEHALF OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Senator Schmitt, members of the Committee, good afternoon. I am Robert Harris, Manager of the E.N.M.R. Telephone Cooperative of Clovis, New Mexico. I am pleased to have this opportunity to testify here today, both as the manager of a small telephone cooperative and as a representative of the National Telephone Cooperative Association on the question of deregulating CATV services.

NTCA is a national trade association representing over 365 cooperative and small telephone systems providing telecommunications services in rural areas in more than 40 states. Development of these systems has been financed largely by the programs of the Rural Electrification Administration.

The Committee is to be commended for scheduling a hearing on this timely topic, which is of great interest to New Mexico and to other states with large, sparsely settled areas. The explosion in communications technology has brought with it the possibility of real competition among information sources. For the first time in decades, we have an opportunity to let the marketplace, and not a Federal agency, regulate communications businesses. Before we turn over to market forces the responsibility of ensuring that consumer needs are addressed, we must assure ourselves that this action will not have a detrimental impact on rural areas. We must be certain that the explosion of new technologies fulfills its much touted potential for bringing a variety of information sources to urban and rural America.

E.N.M.R. provides telephone service to 6,045 subscribers at an average density of .4 subscribers per route mile. Some time ago, E.N.M.R. began to investigate the feasibility of providing cable television service in its service area. Off-the-air television reception in the area is limited. People residing in town can generally receive two network stations and a PBS station which broadcasts nearby. People in the outlying areas are usually able to watch only one station. Preliminary studies suggested that CATV could be viable in many places within the service area. E.N.M.R. is continuing its studies of the feasibility of providing CATV service. Based on our investigations, I am happy to share thoughts concerning how to expedite CATV development in rural areas such as ours.

In the E.N.M.R. studies, we encountered in some areas in which we hoped to provide CATV, small communities surrounded by low-density areas, where a cable company had wired the community and wanted E.N.M.R. to wire the surrounding area. The profit margins on serving the community, where density was 40–60 per mile, were favorable, while those of the surrounding countryside, where density was low, were not. While our studies had indicated that we could have provided a viable cable system with densities far below what the cable companies claim as the threshold for viability, we could not have made a viable system from just the low-density outlying areas. Had E.N.M.R. been able to compete for the franchise in these communities, we would have wired the low-density areas as well. Unfortunately, it is unlikely that those outlying areas alone will become attractive to cable developers for some time.

We continue to explore the feasibility of providing cable service and have found a number of communities and their surrounding areas where we consider a cable system to be a feasible project for E.N.M.R.

A major problem for small telephone systems hoping to provide CATV service is financing. Our studies indicated that at commercial loan rates, the cost of service would have been prohibitively expensive.

As manager of a cooperative telephone system, I am acquainted with the question of the joint use of utility poles. As a member of NTCA, I am also aware that many of my colleagues in rural telphony are providing CATV services in their service areas. I would like to address my remarks to these two issues.

POLE ATTACHMENTS

NTCA opposes extension of Federal pole attachment regulation to cooperatives because we believe it is unnecessary. Based on our experience, telephone cooperatives do not present an obstacle to cable construction. In testimony presented before the Subcommittee on Communications in 1977, NTCA Counsel Dave Cosson noted that to his knowledge, the number of bona fide disputes over pole attachment rates was small and that no NTCA members were involved in such disputes. To my knowledge this is still true. Of course, the low density of the areas served by our members makes them generally uneconomical for commercial cable development. The average subscriber density of a telephone cooperative is 3.27 per route mile, while conventional wisdom holds that a CATV system becomes commercially viable at densities exceeding 30 customers per route mile. Also, the use of aerial cable, and hence of poles by rural telephone systems is declining. Approximately one-third of telephone plant in rural areas are now aerial and over 90 percent of new construction financed by REA is buried.

There is no question that all telephone systems are obliged under the anti-trust laws to make a "bottleneck" facility available on fair and reasonable terms. The recent case of *T.V. Signal Co. of Aberdeen* v. *AT&T*, 49 RR 2d 328 (DSD 1981) affirmed that the treble damage provisions of the anti-trust laws would be applicable if access to poles was denied. This treble damage provision, as well as the possibility of injunctive relief, would appear to be a totally adequate deterrent to anticompetitive behavior.

Pole attachments and attachment rates are regulated by twenty-one states and Puerto Rico. At the time of the deliberation of the current Federal Pole Attachment law, FCC Chairman Wiley asked that cooperatives not be regulated to avoid unnecessary paperwork and because he knew of no abuses of pole rentals.

The concept of extending pole attachment regulation to cooperatives has twice been rejected in Congress. This Committee in 1977 and the entire Senate in 1981 during debate on the telecommunications bill rejected imposing additional pole attachment regulation. In 1977, the Committee stated in its report on S. 1547 that cooperative utilities are: "Already subject to a decision-making process based upon constituent needs and interests. . . . Presently cooperative utilities charge the lowest pole rates to CATV pole users . . . rates (which) presumably reflect what local authorities and managers of customer-owned cooperatives regard as equitable distribution of pole costs between utilities and cable television systems."

I would also like to discuss the unfairness of the pole attachment formula for my fellow NTCA and other rural commercial telephone systems. The rates set by the FCC provide neither fair nor adequate compensation for the use of the pole.

The current rate for pole attachments under the formula established by the FCC reflects the cost of providing 12 inches of space on the pole. However, the actual space requirements of a CATV line are considerably more than 12 inches. Additional space must be allowed for drooping cable between the poles which tend to swing or hang looser than the distance between the attachments on the pole.

The FCC rate does not cover the normal maintenance of the pole which is attributable to CATV or expenses attributable to parts of the pole other than those used for cable attachments. Our telephone subscribers are subsidizing the cable companies that attach to our telephone poles. In contrast, the rates which telephone companies negotiate and pay to electric utilities are considerably higher. This points out the one-sided favoritism of the CATV industry in the pole attachment law.

In summary, regarding the federal pole attachment laws, we urge the Committee to reject proposals to regulate rural cooperative telephone or electric utilities since no abuses have been cited, and since other legal and social forces as described above work to maintain reasonable pole attachment rates. Instead, I suggest you might consider altering the existing CATV pole attachment rate formula in order to provide more equitable compensation to the owners of the pole.

CATV-TELEPHONE SYSTEMS CROSSOWNERSHIP

CATV has long been considered to be the answer to the problem of inadequate video signals in rural areas.[1] However, the growing cable industry has shown little interest in providing service in sparsely settled areas. The small independent telephone systems serving these areas, while interested in providing service, have been deterred by a 1970 FCC rule prohibiting crossownership of cable systems by telephone companies.

Let us examine the origin of the crossownership rule and discuss why it no longer makes sense to continue the restriction. There were three major reasons given for the policy. The basic reason for the rule was a fear of a telephone company monopolizing its poles, either by refusing to give pole attachment space to cable television operators or by charging excessive rental fees. This potential problem was greatly reduced by passage of the 1978 pole attachment law and by the South Dakota case, both discussed above.

A second argument involved a concern that the telephone company would use its local monopoly position to unfairly control the local franchise process. We believe these fears are unfounded. No recent examples have been cited by the cable television industry despite efforts to uncover "telco horror stories." Conversely, instances of cable television industry abuses abounded. For example the National League of Cities has enacted a Code of Good Franchising Conduct in response to the "Rent a Local Citizen" practices of the cable industry.

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[1] Currently, over 30 million Americans do not have access to the three major networks and a public television station, the FCC definition of basic television services.

Third reason for the crossownership rule was to protect the infant cable industry. Perhaps in 1970 the cable industry was small and needed protection; however, it no longer needs protection because it has grown from 2,490 systems serving 4.5 million subscribers to 4,250 systems serving over 22 million subscribers today. The cable television industry serves over four times the number of subscribers as the REA telephone borrowers.

The cable television industry subscriber count is increasing about 12 percent per year and its revenues are growing at a 25 percent rate. In contrast, REA telephone borrowers are growing only about 5 percent annually in subscribers and 10 percent in revenues. In 1981, cable revenues from subscribers totalled $3.9 billion. Advertising added another $90 million. In addition, cable television ownership is becoming more concentrated with over 70 percent of the industry owned by other media entities. Over 30 percent of all cable television systems are owned by broadcasters; 18 percent are owned by program producers and distributors; 13 percent are owned by newspaper and 11 percent by publishing interests. And the concentration is escalating. For instance, Westinghouse last year purchased Teleprompter for $646 million and Capital Cities Communications is purchasing Cablecom General for $139 million. These purchasers are all Fortune 500 members. Westinghouse is the fourth largest broadcast company and Capital Cities is in the top ten. In light of this concentration of control in the cable industry it is difficult to argue that there is any lack of economic maturity in the industry or that the potential for cross subsidization is not greater by these media giants who are significant program producers than by small telephone companies such as ours which serve about 3,000 subscribers and have yearly gross revenues of approximately $1 million.

In 1976 NTCA filed a request for a general waiver of the crossownership rule. NTCA argued that the crossownership ban deprived rural citizens of CATV service which telcos would have provided. The FCC responded two years later with a refusal, but agreed to process individual waivers "expeditiously." Meanwhile, the Commission wrestled with criteria for defining a "rebuttable presumption" that independent cable operation was infeasible. In 1979, the FCC established a density of 30 homes per route mile on a proposed service area as the criterion for the presumption. This standard was debated for two years during which time over one hundred applications for waiver of the crossownership ban were filed by independent telcos in rural areas. The FCC then began a new proceeding to devise standards for an automatic waiver of the crossownership rule for telephone systems serving rural areas. In November 1981, the FCC issued a final rule which used as criteria for automatic waiver, the U.S. Census Bureau definition of rural areas. Thus, any telco can provide CATV in its telephone service area if the cable service area contained no place of more than 2,500 inhabitants and was not included in an urbanized area. In its ruling, the Commission explained the need for the automatic waiver.

"In rural areas, we have determined that the costs of imposing the crossownership rules outweigh their benefits. These costs include foreclosure on delay of cable television service to rural residents and wasted administrative resources at the Commission."

While the FCC ruling was in many ways a boost for rural telephone systems hoping to provide CATV services, problems remain. The standards are extremely narrow, and companies proposing to serve an area only slightly more populous than the standard must comply with the full, cumbersome procedures of filing for a waiver. In the past, telcos have waited up to two and one-half years for FCC approval of such waivers.

The Telecommunications Competition and Deregulation Act of 1981, passed last year by the Senate, could complicate this problem since it would codify the CATV/telco crossownership ban except for an exemption for rural areas of low-density. Hopefully there would be no more delay and the FCC would not have to propose a new definition of a "rural area of low density."

Under the current rules, telephone systems planning to build CATV systems are still required to file with the Commission an application for a certificate of public necessity and convenience (Section 214 applications). This requirement imposes an additional administrative burden of delay, one which is not also imposed on CATV companies.

PROSPECTS FOR CATV IN RURAL AREAS

NTCA supports public policies which are designed to encourage the development of CATV in rural areas. We belive that such policies must include allowing rural telephone systems to provide CATV service. Arbitrary regulatory restraints to telco participation should be eliminated.

An additional impediment exists in financing of CATV systems. Last month's Cablevision, the cable industry publication, cited availability of financing as one of the major issues facing the industry in 1982.

As you recall, the Farmers Home Administration (FmHA) began making loans for CATV development in late 1979. The program was funded at $34 million per year in fiscal years 1980 and 1981. The program financed 44 projects bringing CATV to 116,000 rural subscribers. The Reagan Administration cut in half the 1981 funding and eliminated funding the FmHA cable TV program for 1982. No monies are recommended for 1983. Alternative sources of commercial funding have been difficult to obtain for low-density rural CATV construction. NTCA would support refinancing the FmHA cable television program or a similar loan program.

Lack of television signals is a considerable problem in rural areas. CATV, long considered to be a solution to the problem, has not flourished in low-density areas. Millions of rural Americans still receive less than the basic telecommunications services.

Rural telephone companies have shown by filing for 187 waivers of the FCC crossownership ban that they are ready, willing and able to provide CATV to these unserved rural Americans. NTCA urges the Committee to take the initiative to scrutinize carefully the rural communications problem and support programs to foster its development. I urge you to reaffirm the goal of the 1934 Communications Act "to insure a rapid, efficient communication systems to all people of the United States," and to encourage telephone systems to provide CATV service in their rural service areas.

Thank you for the opportunity to testify.

Senator SCHMITT. Ray?

STATEMENT OF RAY POLVADORE, PRESIDENT, ROCKY MOUNTAIN CABLE ASSOCIATION; VICE PRESIDENT, NEW MEXICO CABLE ASSOCIATION

Mr. POLVADORE. Thank you, Senator. My name is Ray Polvadore. I am vice president of telecommunications. We operate one system in New Mexico; we have one operating in Newport Beach, Fla.; we have several franchises we are are getting ready to build, and I want to talk a little bit about role regulations.

We are a small company, and we are going into very small communities. Some of the numbers of the communities we are going in is only about 400 to 450 homes pass. We are having some problems with getting pole attachments from some companies. And one of the things that one company came up with is a pole attachment agreement at a normal rate, but I also had to sign a lease service agreement. And the service agreement said that I had to pay $4 a pole for a service agreement, and all they would do is call me if their pole fell down or my cable fell down from their pole. So it's another contract to get the same amount of money that they aways had been getting before the FCC stepped in and lowered the rates. I think that's holding a gun to my head and making me sign it, because I have to get on these poles.

Communities don't want two sets of poles running down the alleys and streets, so it is mandatory that I get that lease agreement to build my cable system and have to pay that outrageous price. As long as I have a service agreement, I can get a pole lease agreement. If I don't pay the service agreement I lose my pole lease agreement, and I have to take my cable down. So that is one of the things that I think the FCC didn't look into, or didn't expect to come up when they set these rates.

One of the other things is, this is delaying this trying to get this contract, and it's delaying service to the people. We can't build the system until we get the contract, and our attorney just doesn't want to sign this because along with the service agreement we have to fill out a letter from our attorney stating that he agrees with this, and agrees that we will not go to any regulatory bodies with this, and we confirm that we are happy with the contract. He doesn't feel like he can sign it, because down the road if he's not our attorney, then if we sell our company, then they are struck with it. And we are holding off on that and trying to eliminate that.

So I think in getting these small communities—everybody wants them wired, and as a small company we go in and wire them a little cheaper and operate them a little over—less overhead cost than the large companies that are looking at larger cities. But I think if the pole lease agreement, the pole problem is not regulated. and also your co-ops and your rural, in the future, they can just hold us out. You know, we get a franchise to build, they can pull—I am not saying they will, but they could pull some tactics like this other company is doing to me now and hold off and eventually lose our franchise, and they could come in and get the franchise and build the cable system. They can tell the city, "Well, we own the poles. There won't be any problems in delays, and we can start from scratch next month." And we are sitting here trying to get a pole attachment agreement.

So I think we need mandatory access, and then work out the problems on the poles. If they can't agree with their rates, you know, then let the FCC set the rates. But I think we are going to eventually need mandatory access to wire some of these small communities in the future.

Most of my information came from the top of my head, so it won't be in the minutes. But I do have some minutes, so I won't take any more of your time. I will be happy to pass to the next——

Senator SCHMITT. You have some prepared testimony you would like to provide us, don't hesitate to do so. I should add that our record will be on for 2 weeks for interested parties to provide us testimony for the records.

[The statement follows:]

STATEMENT OF RAY POLVADORE, PRESIDENT, ROCKY MOUNTAIN CABLE ASSOCIATION

Good afternoon, Senator Schmitt. My name is Ray Polvadore and I am vice president of telecommunications. We operate cable systems serving subscribers in New Mexico. I am also Vice President of the New Mexico Cable Television Association and President of the Rocky Mountain Cable Television Association.

I consider it a priviledge to be here to speak on behalf of the cable industry, although I would immodest if I did not acknowledge that my views may not be shared by each and every cable operator any more than the League of Cities speaks for each and every mayor in this country. Since you have asked us to keep our remarks as brief as possible, I will confine myself to only two of the issues you raised in your letter of invitation, namely the questions of government ownership and whether the federal pole attachment law should be extended to publicly and cooperatively owned utilities. My compatriots from the cable business here today will cover the other areas.

I find the fact that it is even necessary to hold hearings on the possibility of government ownership of cable television systems discomforting. To even consider government ownership and control of an important and still developing medium of communications is contrary to every pretext upon which our political and economic philosophies are based.

Aside from the obvious first amendment implications of government owned and controlled media, there is the question of the role of government in our society. Governmental functions should involve only those areas or essential service to the people which the private sector cannot or will not undertake. As has been established by my colleagues here today, cable television is not an essential service. More importantly, there is seldom if ever a scarcity of qualified candidates from the private sector interested in owning and operating a cable system.

Not withstanding the overwhelming philosophical arguments against government ownership, I think it is important to examine exactly why some cities want to get into the cable business in the first place.

The first justification is that the city government can better serve the public interest. Now I do not want to get into a liberal versus conservative argument here, but I find that logic patently absurd. All forms of communications combine to serve the public quite well in the absence of any municipal role. I dare say our communication system is light years ahead of any other country in the world. Moreover, the federal government—led by the Reagan Administration and the Senate Commerce Committee—has come to the fundamental conclusion that in all but a few areas of communications, the market place, not the government at any level, can best determine and meet the needs of the public. I am very concerned that those most in favor of government ownership of cable on this so-called public service ground do so because they are fearful that given the free choice of the market place, cable viewers will choose a mix of programming that these do-gooders disapprove of.

The real reason most communities are flirting with government ownership however, boils down to money. They are not bashful about it. To illustrate my point, let me read from a press release issued recently by the Minnesota Education Association:

ST. PAUL, MINN. (Special).—The Minnesota Education Association today proposed public ownership of cable television in Minnesota to help resolve the state's budget dilemma.

There is a potential revenue of hundreds of millions of dollars destined for private entrepreneurs that could be funneled into people programs.

"It goes without saying that revenues accruing to the state from private cable TV are—and will continue to be—a pittance compared to what they could be."

"The potential benefits of cable—financial and community service—are too great to simply give them away to private profiteers at this point in Minnesota's history."

Now I appreciate that the Congress—having cut back on many grant-and-aid programs to cities—may find it easier to turn their backs and let the cities prospect for money under any rock they can find. But knowing you, Senator Schmitt, I doubt this applies to you. As my colleague, Doug Dittrick, explained on the first panel, there is absolutely no guarantee that a cable television system—especially one of the new generation multi-channel systems—will ever be profitable. I believe it is completely irresponsible for city officials to put the taxpayers at risk—enormous risk for a project that is not an essential public service and would willingly be done by the private sector. Nor do I believe a locality has any right to use bond financing, exempt from federal taxation, to pay for such a risky venture.

One last point on this subject: The League of Cities claims that cable television's rates and programming must be monitored to protect the public interest. City governments, they say, are the perfect guardian of these interests. Yet if the city itself owns the cable system, who then guards the guardian? If the cities find—as I fully expect they would—that their cable system is not generating the revenues they had hoped for—and no doubt already committed—what then? Do rates go up? Do taxes go up? All in all, I find it hard to believe that the public interest could ever be served better by municipal ownership and control than it will be served under the free market.

The only circumstances under which government has a place in cable ownership is in that rare instance where there is absolutely no qualified private party available to provide competent cable service to a given community. Only then, under strict FCC guidelines and scrutiny, is there a place for such government ownership.

POLE ATTACHMENTS

If there is any monopoly in the broad spectrum of cable television systems, it is clearly the utility companies. A cable operator is forced to use the utility's poles in order to reach the citizens of a given community. This is the only means available since it is not practical for a city to approve the building of a second set of poles parallel to the first.

The Pole Attachment Law is obviously a good and necessary law which is working. It has achieved results in preventing anti-competitive, monopolistic practices which ultimately are felt by the cable subscriber. Since publicly and cooperatively owned utilities enjoy the same monopolistic position as their privately owned counterparts, there is no reason why the pole law should not be extended to these entities as well.

Senator Schmitt, this concludes my formal statement. I look forward to the opportunity of discussing these issues further at the conclusion of the other testimony.

Senator SCHMITT. Carl, do you want to proceed with a summary of your testimony?

STATEMENT OF CARL M. TURNER, NEW MEXICO RURAL ELECTRIFICATION COOPERATIVE ASSOCIATION

Mr. TURNER. Thank you, Senator. It's an old sports expression, Senator, that the opera is not over until the fat lady sings, and the fat lady is now going to sing.

We have submitted a statement from the people representing the rural electric co-ops. I also submitted a statement on the economic and technical problems of pole line attachments to rural electric and telephone cooperatives.

Senator, we have also submitted some testimony by some good friends of mine from Southwestern Public Service Co., and we would like for all of these things to go into the record if a record is made.

Senator SCHMITT. They will be in our record.

Mr. TURNER. It is not too often that the IOU's and the cooperatives get together, but on this particular occasion we are 100 percent together.

I will try to be as brief as I possibly can. My name is Carl Turner; I am executive manager of the New Mexico Rural Electrification Cooperative Association, Inc. Our membership includes 16 of the State's 17 electric distribution co-ops and 1 generation and transmission cooperative in New Mexico.

The State's 17 distribution cooperatives provide the only central station electric service for approximately 85 percent of the land area in New Mexico and serve approximately one-third of the population. We serve all or part of every county in the State of New Mexico, and in several counties co-ops provide the only electric service in that county. We are fully regulated by the New Mexico Public Service Commission.

I was interested and amused by a comment by one of the former panelists that they would not get the guaranteed return of a public utility that is operating in New Mexico. This, of course, is often said.

There is no such thing as a guaranteed return for any public utility in New Mexico or any other State, as far as I know. And, in fact, I would direct your attention, Senator, to the many regulated utilities in New Mexico which have shown up with the red figures in the last year, or last 5 years, or whatever, below the profit line.

Regulation of utilities generally assumes you are allowed to earn up to a certain amount, but it doesn't guarantee that you will be able to earn up to that amount. And, in fact, in many cases in New Mexico, a utility may be allowed to earn 8 percent, 10 percent, 15 percent. But in many cases when the books are balanced at the end of the year, the utility is in the red. I just wanted to point out that there is no free lunch in this business as has been already testified to.

I would like to show the interest, Senator, of my people, my members in New Mexico. They have come from as far away as Animas, and that's about as far away as you can get. They come from Mora and all kinds of exotic places: like Espanola, Taos, and Socorro. I would like for them to stand up and I'm not going to take the time to introduce them.

Senator SCHMITT. I am going to let you refer to them when you refer to Mora as exotic.

Mr. TURNER. They are bashful-type people, but they are country people.

Senator SCHMITT. No wonder there's so many people here today.

Mr. TURNER. At the most recent annual meeting of our National Rural Electric Cooperative Association held in Atlanta, Ga. last week—and the weather there was terrible. Senator—the membership unanimously reaffirmed the following resolution of NRECA:

> Federal Regulation of Pole Line Attachments—Regardless of any legislation which may be passed vesting regulations of pole line attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric co-ops or not, is bad legislation, and pole line attachment matters should be a matter of contractual arrangements between interested parties; and if any government regulation is deemed necessary, it should be at the State level only. We urge the NRECA staff to take such measures as may be necessary to support this position.
>
> Although rural electric cooperatives are not regulated by the Federal Communications Commission, we feel compelled to express our views about the FCC's interpretation of the formula suggested by the Senate committee in its 1977 report on the Communications Act. Everyone in the electric utility industry knows that National Electrical Safety Code requirements mandate at least 40 inches of basic clearance between any communications equipment and electric utility facilities attached to the same pole. Despite this regulation which must be complied with by the utility, be it rural cooperative, municipal, or a power company, the FCC arbitrarily selected 12 inches as the appropriate space on which to base its charges for pole attachments.

As part of our testimony, we do have a photographic picture in here of the drawing, and I would hope that it is a part of our testimony.

In my mind, there is an obvious oversimplification of the charges in favor of cable TV. Simply stated, this automatically reduces the rate for annual charges by the ratio of 12 inches to the usable space of the pole, instead of the 40 inches which must be provided to meet safety requirements. As a result, the annual charge is extremely low—estimated to about 5 cents per month on the average for three New Mexico cooperatives which have been studied. So, if we apply FCC regulations to the three electric co-ops studied in New Mexico, the result would be that we could charge 60 cents a year, or 5 cents a month. This amount fails to cover ordinary operation and maintenance expenses, taxes and long-term interest expense which should be attributable to cable TV. Therefore, this means that the rural electric cooperative, municipal, or power company, or whoever owns the pole, is subsidizing the cable TV industry. We believe this is unfair and unnecessary. This further supports our fundamental position that pole attachments are and should remain contract matters between the owners of the pole and the cable TV, telephone company or others that desire to attach cables or lines to existing poles.

We wish to reaffirm our position which has been constantly held by our member systems, that is, simply stated, we are more than willing to accommodate the cable TV, telephone, and others who need to make attachments to rural electric poles.

Senator, we are reminded of that old story that is attributed to George Bernard Shaw, when he was at a party in England, and he approached the belle of the party and asked her if for a 1,000 pounds she would spend the weekend with him, and she said, "certainly." He said, "How about 10 pounds?" And she said, "What do you think I am?" Well, George is reported to have replied, "We have already established that. We are only negotiating over the price."

Sure, we are willing to dance with them. All we want to do is negotiate over the price. We can get to the poles anytime.

Speaking on behalf of the New Mexico Rural Electrification Cooperative Association and all of its member systems, I reaffirm our determination to oppose any effort to compel our member systems to be regulated by the Federal Comunications Commission. Our long record of reasonable charges for pole attachments clearly indicates that such regulation is unnecessary. Further, any regulation required should be done at the State level.

We have asked two people, who are familiar with rural electrification, electrical engineering and ratemaking, to prepare a report on the engineering and economic aspects of the FCC proposal and its compliance and/or impact on the National Electrical Safety Code. This 13-page report is attached to my statement as exhibit "A".

I thank you very much.

Senator SCHMITT. Thank you, Carl.

Mr. TURNER. I don't intend to be an expert on all the technical areas. On some of these things I may have to ask the experts for testimony.

[The statement follows:]

STATEMENT OF CARL M. TURNER, NEW MEXICO RURAL ELECTRIFICATION COOPERATIVE ASSOCIATION

Mr. Chairman and members of the Committee, my name is Carl M. Turner. I am Executive Manager of the New Mexico Rural Electrification Cooperative Association, 614 Don Gaspar, Santa Fe, New Mexico. Our membership includes sixteen of the seventeen Electric Distribution Cooperatives and one Generation and Transmission Cooperative in New Mexico.

The Distribution Cooperatives provides the only central station electric service for approximately 85 percent of the land area in this state and serves approximately one/third of the population. We operate approximately 35,000 miles of distribution lines in New Mexico. These Cooperatives are consumer owned, nonprofit and governed by a Board of Directors elected by the Members.

I appreciate this opportunity to participate in this hearing and appear here today to express the views of the NMRECA regarding potential changes in the Federal Communication Commission's jurisdiction over Cable Television and Telephone attachment agreements.

At our most recent Annual Meeting of our National Services Organization, the National Rural Electric Cooperative Association (NRECA) held in Atlanta, Georgia last week the membership unanimously reaffirmed the following resolution which sets out NMRECA's and NRECA's official position on pole line attachments.

"Federal Regulation of Pole Line Attachments.—Regardless of any legislation which may be passed vesting regulations of pole line attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric coops or not, is bad legislation, and pole line attachment matters should be a matter of contractual arrangements between interested parties; and if any government regulation is deemed necessary, it should be at the state level only. We urge the NRECA staff to take such measures as may be necessary to support this position."

Although rural electric cooperatives are not regulated by the Federal Communications Commission, we feel compelled to express our views about the FCC's interpretation of the formula suggested by the Senate Committee in its 1977 report on the Communications Act. Everyone in the electric utility industry knows that National Electrical Safety Code requirements mandate at least 40 inches of basic clearance between any communications equipment and electric utility facilities attached to the same pole. Despite this regulation which must be complied with by the utility, be it rural cooperative, municipal, or a power company, the FCC arbitrarily selected 12 inches as the appropriate space on which to base its charges for pole attachments. In my mind, this is an obvious oversimplification of the charges in favor of Cable T.V. Simply stated, this automatically reduces the rate for annual charges by the ratio of 12 inches to "the usable space" of the pole, instead of the 40 inches which must be provided to meet safety requirements. As a result, the annual charge is so low (estimated to be about $.05 per month on the average for three New Mexico Cooperatives which have been studied) that it fails to cover ordinary operation and maintenance expenses, taxes and long term interest expenses which should be attributable to Cable T.V. Therefore, this means that the rural electric cooperative, municipal, or power company, or whoever owns the pole, is subsidizing the Cable T.V. industry. We believe this is unfair and unnecessary. This further supports our fundamental position that pole attachments are and should remain contract matters between the owners of the pole and the Cable T.V., telephone company or others that desire to attach cables or lines to REC poles.

Finally, it is indeed difficult for us to understand that at a time when the Administration is determined to reduce the regulatory burden placed on American taxpayers by the Federal Government, the Cable T.V. industry is urging Congress to require regulation of pole attachments by the Federal Communications Commission. In our opinion, this is wrong and would burden the FCC with a very large number of pole attachment contracts which would have to be reviewed.

I would like to add that the Rural Electrification Administration (U.S. Department of Agriculture) has always encouraged the joint use of REC utility poles. In fact, REA policy bulletins on joint use facilities mandate that the costs for such equipment must be allocated fairly or loan funds for the Distribution line will be denied. Therefore, if REC's are placed under the restrictive FCC rate formula, we may well be in danger of losing loans for necessary distribution facilities. Additionally, REA currently reviews all joint use agreements to insure that costs are allocated equitably among the users.

We wish to reaffirm our position which has been constantly held by our member systems, i.e., simply stated, we are more than willing to accommodate the Cable T.V., telephone and others who need to make attachments to rural electric poles. However, we believe that this should be a contract matter between the owner of the poles and the party that wishes to use them and the party that wants to use the poles should bear the full cost of their use.

Speaking on behalf of the New Mexico Rural Electrification Cooperative Association and all of its member systems, I reaffirm our determination to oppose any effort to compel our member systems to be regulated by the Federal Communications Commission. Our long record of reasonable charges for pole attachments clearly indicates that such regulation is unnecessary. Further, any regulation required should be done at the state level.

We have asked two people, who are familiar with Rural Electrification and Electrical Engineering, and rate making to prepare a report comment on the Engineering and Economic Aspects of both the FCC proposal methodology and the methodology consistent with the National Electrical Safety Code. This 13-page report is attached to my statement as Exhibit "A".

I thank you for the opportunity to present this statement and to participate in this hearing.

EXHIBIT "A"

STATEMENT OF ROBERT E. WITTER, P. E. AND IRA M. AVANT, P. E.

I. ABSTRACT

The purpose of this statement is to examine the complex problem of joint use of electric utility poles by both community antenna television (CATV) or telephone systems and electric utility systems. First, the engineering problems associated with joint use will be examined, and then the economics concerning such joint usage will be considered.

II. ENGINEERING CONSIDERATIONS OF JOINT USE OF UTILITY POLES

The basic document in establishing clearances between electric utility lines and communications lines is the National Electrical Safety code [1, 2] (hereinafter referred to as the "Code"). The Code also specifies minimum ground clearances which must be maintained by both electric utility and communication companies. The Code is published by the American National Standards Institute and is updated approximately every four years. It is a document of wide acceptance and is generally recognized by most regulatory commissions as the basic standard for line construction and maintenance.

Application of the Code by electric utility and communications engineers requires use of "good engineering judgment", such that all reasonably known conditions will be factored into line construction. To properly set the framework, the 1977 Code, under Part II, Section 20, Paragraph 200, reads in part—"The purpose of these rules is the practical safeguarding of persons from hazards arising from the installation, operation or maintenance of overhead supply and communication lines and their associated equipment. They contain provisions necessary for the safety of employees and the public. They are not intended as a design specification or an instruction manual." The same language is also repeated in the 1981 Code under Section I, Paragraph 10. Therefore, the Code should never be used as a design manual and good engineering practice would dictate that the Code be considered a minimum set of guidelines and allowances or safety margins above the minimums be allowed in design.

The 1977 and 1981 Codes both specify the minimum vertical separation between electric utility conductors and communication conductors. This separation is addressed in both the 1977 and 1981 Codes in Rule 235 and specifies the minimum separation as 40 inches.

The subject of vertical ground clearance of conductors is also addressed by both the 1977 and 1981 Codes. Rule 232 specifies the minimum ground clearances which must be maintained by communications conductors and electric utility conductors. In general, the clearance to be maintained by both electric utility neutral conductors and communication conductors are the same. There are some exceptions which allow lower clearances for communications conductors but they are generally applicable only for areas not subjected to any anticipated vehicular traffic or to spans which do not exceed 150 feet in length. Again, using good engineering practice, prudent design engineers should increase these minimums such that safety margins would exist for abnormal circumstances.

In most electric utility construction, the standard pole for single phase distribution line (either of the 7,200 volt or 14,400 volt class) is a 35-foot pole. Specifications require that the pole be buried a minimum of 6 feet, thereby resulting in 29 feet of pole above ground. In standard construction, the phase (or energized) conductor is installed or "framed" at the top of the pole and the neutral conductor is framed four feet below the phase conductor. Therefore, the neutral conductor would be installed 25 feet above ground at the pole. Now assume that a communication conductor is installed 40 inches below the neutral conductor. This would place the communication conductor three feet, four inches below the neutral conductor or at a point 21 feet, eight inches (maximum) above ground. Assuming a basic minimum clearance, according to the Code, of 18 feet for either electric utility neutral conductors or communication conductors, this allows only three feet, eight inches of "sag" in the communication conductor before the minimum clearance might be violated.

Figure II—1 illustrates the dimensions for framing both electric utility and communication conductors on a 35-foot pole and the relative positions and ground clearances using #4 ACSR conductor for the electric distribution line. This drawing illustrates that minimum clearances can be violated by using 35-foot poles and standard span lengths with *no* margins of safety factored into the design. It must also be noted that the violation of minimum clearances is caused by the communication conductor and not the electric utility conductors, since the communication conductor must be installed beneath the electric utility neutral conductor. It is for this reason that either a taller pole or a shorter span is used to facilitate the installation of the communication conductor. Since the use of a shorter span is generally more costly than using a taller pole, the option of using a taller pole is generally preferred. Poles come in five foot increments, so the next sized pole which could be employed would be a 40-foot pole. Since a 40-foot pole is also buried to a depth of six feet, it will provide an additional five feet of clearance over a 35-foot pole. Referring again to Figure II—1, it is obvious that using a 40-foot pole would supply adequate clearance both between the electric utility supply conductors and the communication conductor and also between the communication conductor and ground. Additionally, some margin of safety in the clearance would be allowed.

There are some special items which must be noted about Figure II–1. This figure is a "conservative" illustration of the required clearances because of the following:

(1) The ground clearances are "basic" clearances and must always be increased for longer spans. This increase is 0.1 foot for each 10 feet of span length in excess of the basic span lengths. Basic span lengths are defined by the Code as 175 feet for lines in the NESC "heavy loading" district and 250 feet in the NESC "medium loading" district.

(2) Since communication conductors or conductor assemblies are generally heavier per foot of cable than #4 ACSR conductor, more sag must be designed into the communication conductor spans to ensure proper tension in the conductor. This means that communication conductors (at midspan) will generally have much more than 40 inches of clearance from the electric utility lines when 40 inches of clearance is maintained at the pole. This can only have the effect of reducing the resultant ground clearances of the communication conductor shown on Figure II–1.

((3) Figure II–1 shows clearance with *no* margins for safety or design and construction tolerances. Prudent engineering allows for safety margins to be added to minimum clearances to provide safety tolerances.

It should be noted that the Interpretations Committee of the National Electrical Safety Code Committee does not allow the 40-inch clearance between electric utility conductors and communication conductors to be obtained through diagonal measurement, but only through vertical measurement. In a formal request to the NESC Interpretations Committee on February 28, 1968, the question of obtaining the 40-inch clearance through diagonal measurement was put to the Code Committee. The interpretation of the committee was published March 20, 1969 and formally specified that the 40-inch clearance must be measured vertically and cannot be measured diagonally.[3] Therefore, there is no accepted substitute to the 40-inch vertical clearance between the electric utility conductors and the communication conductors.

It should also be noted that there are exceptions in the 1981 edition of the Code which allow reduced clearances for communications conductors and not for utility conductors. These exceptions are granted in the case of the lines passing over "spaces or ways accessible to pedestrians only," which is defined as "areas where vehicular traffic is not normally encountered or not reasonably anticipated." An exception is also granted in some cases for spans which do not exceed 150 feet. But as previously mentioned, the use of short spans of this nature generally is not cost effective for electric utilities. Therefore, the reduced clearances allowed by the use of shorter spans should not be considered. It is generally accepted by the electric utility industry, though, that the minimum clearance shall always be maintained at or above 18 feet. Therefore, referring to Figure II–1, a taller pole generally is employed when it is anticipated that communication conductors will also be installed on the pole.

(1*) SPAN LENGTH (FT)	(2*) MIN. CONDUCTOR SAG (FT - IN)	(3*) RESULTANT COMMUNICATION CONDUCTOR GROUND CLEARANCE (FT - IN)
200	1' - 0"	20' - 8"
250	1' - 6"	20' - 2"
300	2' - 0"	19' - 8"
350	3' - 0"	18' - 8"
400	5' - 0"	16' - 8"
450	7' - 6"	14' - 2"

ASSUMPTIONS

1) ELECTRIC CONDUCTOR - #4 ACSR 7/1.
2) SAGS COMPUTED FOR MAX. CONDUCTOR TENSION OF 50% OF ULTIMATE STRENGTH, 60°F, FINAL SAG.
3) COMMUNICATION CONDUCTOR SAG SAME AS NEUTRAL CONDUCTOR SAG TO MAINTAIN MINIMUM 40" SEPARATION.
4) NO CLEARANCE MARGINS ASSUMED.

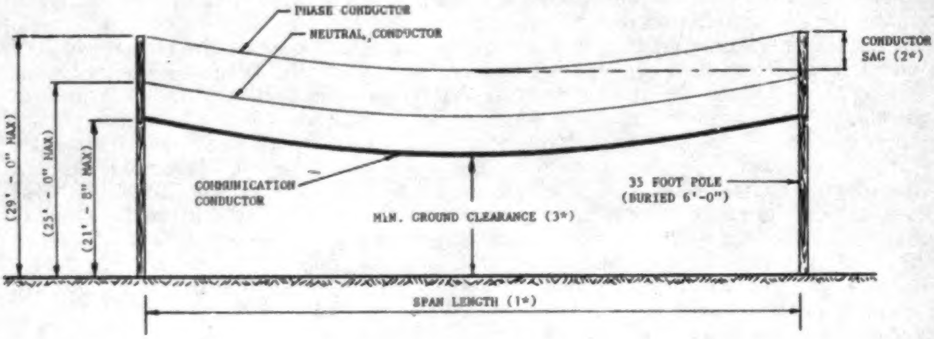

FIGURE II - 1

TYPICAL ELECTRIC UTILITY SPAN

WITH JOINT-USE COMMUNICATION CONDUCTOR

(NOT TO SCALE)

III. ECONOMIC CONSIDERATIONS OF JOINT USE FACILITIES ON ELECTRIC UTILITY POLES

There is a general agreement between both electric utilities and communication companies that some form of compensation should be granted to the electric utility if a communication company attaches its facilities to the electric utility's pole. This is because the communcation company is "renting space" from the electric utility to install its facilities. Also, the compensation, usually a set rental per year per pole, is generally much cheaper than the communication company installing and maintaining their own poles, or burying the facilities in a common right-of-way. The basic disagreement between electric utilities and communication companies appears to be the manner in which the compensation is determined. In this regard, several alternatives to this question will be examined.

Table III-1 shows the average costs of installed poles for three different electric cooperatives in New Mexico. These are current installed pole costs by height of pole. Also shown in Table III-1 are the incremental costs between 35 and 40-foot poles. As previously discussed, additional pole height is generally required if it is known that communication facilities will be installed on the pole. This additional height guarantees the Code clearances will be met with an added safety margin. Since this additional height is required only because of the added communication facilities, it is only logical that the incremental costs should be borne by the communication companies.

One way to compute the annual cost of the additional pole height required for communication facilities would be to take the incremental cost and multiply it by the annual carrying charge of the utility. Table III-1 shows the annual carrying charges for the three cooperatives previously mentioned, the incremental costs between 35-foot and 40-foot poles, and the resultant annual carrying charge for the incremental cost. This would be the logical amount to charge the communication companies for the additional pole height required to meet Code clearances. However, giving the benefit of the doubt to the communication companies, it could be argued that the Code requires 40 inches separation between the electric utility lines and the communication lines. Using this approach, the annual costs, as computed in Table III-1, could be adjusted to only "allocate" the minimum 40 inches of required separation out of the five feet additional pole. This represents two-thirds (40''/60'') of the annual charge and its also reflected in Table III-1. This would be the absolute minimum which should be charged to the communications companies on an annual basis for pole rentals based upon the current annual carrying charges of the utility.

TABLE III-1.—COMPUTATION OF ANNUAL CARRYING CHARGES

	Continental Divide Electric Cooperative (Grants, N. Mex.)[1]	Farmers, Electric Cooperative (Clovis, N Mex.)[2]	Northern Rio Arriba Electric Cooperative (Chama, N. Mex.)[1]	Composite cost
Installed pole costs:				
35 ft	$245.61	$161.77	$269.50	$225.63
40 ft	307.61	262.40	401.00	323.67
Incremental cost	62.00	100.63	131.50	98.04
Annual carrying charges (percent) (based on O. & M. taxes and interest per dollar of plant investment)	(12.33)	(10.64)	(15.02)	(12.02)
Annual carrying charge:				
Full incremental cost	7.64	10.71	19.75	11.78
2/3 incremental cost	5.12	7.18	13.23	97.89

[1] All 35-ft poles of various classes are included in this average.

[2] Only 35-ft class 5 and 40-ft class 4 poles are used by this utility.

Another approach to valuation of this annual rental charge is to examine just the debt service required on new facilities installed under current interest rates. At present, none of the above three electric cooperatives is eligible for 100 percent REA financing, but must borrow loan funds from both REA and a supplemental financing agency. At the present, the blended borrowing rate for cooperative is approximately 8 percent (assuming 70 percent financing from REA at a 5 percent interest rate and the remaining 30 percent financing from a supplemental agency at 15 percent) and paid over 35 years. Table III-2 shows just the annual debt service on the incremental costs for each cooperative at not only the assumed blended 8 percent interest rate, but at future higher rates since most utilities can expect interest rates to rise somewhat in the future. Also note that this table does not include any taxes or operation and maintenance expenses which are generally included in carrying charges. This method of computation assumes an alternative in which the communication company would "finance" the incremental cost of the pole by agreeing to pay the debt service on the incremental cost of the pole over the life of the loan. This methodology also assumes installation of new poles for all unit rentals. But it must be remembered that joint use generally shortens the life of utility poles and the poles will have to be replaced at shorter intervals. This methodology is "paying" for the present installations and the "future cost" of more costly replacements.

A 35-year loan may exceed the actual service life of the joint use pole. The recommendations in REA Bulletin 183-1 prescribe depreciation rates of 3 percent to 4 percent per year for poles. Assuming no salvage value, this would imply service lives of 25 to 33 years. Therefore, if the service life was shortened below a 33- to 35-year period, the annual debt service figures shown in Table III-2 would increase. However, once again, the benefit of the doubt is given to the communication companies, since this is an illustrative report only and is not a formal study of recommended annual charges.

Apparently, the Federal Communications Commission (FCC) has previously advocated a "1/13.5 ratio rule," maintaining that communication companies occupy only one foot of space out of the usable 13.5 feet of space on a typical pole and therfore should only pay that fraction of cost. The FCC formula completely ignores the requirements of the National Electrical Safety Code which mandates 40 inches of separation between the utility conductors and the communication conductors. Since this 40 inches of minimum clearance is mandated by the Code and is required by virtue of the installation of the communication conductors, the incurred costs for the additional pole height can only be logically assigned to the communication company. The calculations shown in the preceding tables not only and therefore should only pay that fraction of cost. The FCC formula completely but also calculate the prorated cost of the 40 inches of pole allocated to the communication company. It is obvious that the charges shown in the above tables are higher than would be yielded by the FCC formula. However, the costs in the above tables more clearly reflect the "space" on the pole which is required by the Code and by virtue of the communication conductor installation.

TABLE III-2.—COMPUTATION OF ANNUAL DEBT SERVICE ON INCREMENTAL POLE COSTS

	Continental Divide Electric Cooperative	Farmers' Electric Cooperative	Northern Rio Arriba Electric Cooperative	Composite cost
Incremental costs	$62.00	$100.63	$131.50	$98.04
35-yr loan interest:				
Debt service on full incremental cost:				
8 percent	5.32	8.63	11.28	8.41
10 percent	6.43	10.43	13.64	10.16
12 percent	7.58	12.31	16.09	11.99
Debt service on ⅔ incremental cost:				
8 percent	3.56	5.78	7.56	5.63
10 percent	4.31	6.99	9.14	6.81
12 percent	5.08	8.25	10.78	8.03

IV. CONCLUSIONS

It can logically be argued by the communication companies that, under some circumstances, proper clearances can be maintained by communication companies from the electric utility facilities and from ground on 35-foot poles, with no increase in the pole height. However, as discussed in Section II and illustrated in Figure II-1, the general situation requiring 18 feet of minimum ground clearance for spans over 350 feet requires at least a 40-foot pole for the installation of both electric utility lines and communication lines. This incremental cost should be charged to the communication company because it is only by their installation that the additional pole size is required. Even given the scenario of an installation of both electric utility lines and communication lines on a 35-foot pole, there must be a "reservation" of vertical pole space of at least 40 inches to comply with the National Electrical Safety Code, even if proper ground clearances are maintained. Therefore, at the very least, economics and logic would dictate that at least the 40 inches of incremental cost should be allocated to the communication companies and be recovered through an annual pole rental.

The FCC method of determining an annual rental charge completely ignores the mandate of the National Electrical Safety Code's 40 inches of separation. The FCC cannot logically advocate a method whereby a mandated minimum clearance between the electrical utility lines and the communication lines would be violated. Therefore, the proposed FCC formula should be modified to take into account the space which must be "reserved" for installation of communication conductors.

Finally, the present day concepts of tariff and rate making mandate that all costs incurred over and above normal costs should be assigned and recovered by the "user" of the additional facility. It is the position of the rural electric cooperatives in New Mexico that the "user's fee" for rural electric cooperative poles be based on the actual costs incurred by the electric utility and not on hypothetical assumptions or formulas. We maintain that the previously proposed FCC formula is not based on either logic or Code standards and that the communication companies be required to pay for the "reserved and mandated space" which they require on each electric utility pole.

VI. REFERENCES

1. *National Electrical Safety Code—1977 Edition* (American National Standard C2), New York, Institute of Electrical and Electronics Engineers, Inc., February 1977.

2. *National Electrical Safety Code—1981 Edition* (American National Standard C2), New York, Institute of Electrical and Electronics Engineers, Inc., September 1980.

3. National Electrical Safety Code Committee, *National Electrical Safety Code Interpretations 1961–1977*, New York, Institute of Electrical and Electronics Engineers, Inc., 1978.

4. Norman N. Barish, *Economic Analysis*, New York, McGraw-Hill Book Company, 1962.

5. REA Bulletin 181–1, *Uniform System of Accounts for Electric Borrowers of REA*, U.S. Department of Agriculture, January 1978.

6. REA Bulletin 183–1, *Depreciation Rates and Procedures*, U. S. Department of Agriculture, October 1977.

Senator SCHMITT. Would any of you gentlemen care to comment on the issue of cross-ownership as it relates to the more rural aspects of this question? I know that it's a little bit different kind of question when you are dealing with a cooperative and some other situations, but let's dig into that a little bit. Is there anything that you feel is appropriate about the current restrictions on cross-ownership?

Do you think new restrictions should be placed on other forms of ownership?

Ed, would you want to start?

Mr. PENA. I don't know exactly what you are talking about, cross-ownership, because I happen to be in the television business, and I happen to be in cable. What are you talking about?

Senator SCHMITT. You are confined, you can't do that in the same location?

Mr. PENA. No, I can't do that in the same location. I can't do that within 70 miles.

Senator SCHMITT. Well, what is your reaction to this? Do you think it's a reasonable restriction, or is it something that is inhibiting the growth of services, or what?

Mr. PENA. I think that it shouldn't be there, because I think that anybody that wants to own two different businesses in an area, and he's running them well, he should be allowed to do it. Because I think that a lot of times it restricts you from doing things.

How come there's radio and cable TV can be allowed in the same community, and yet a television station cannot be allowed in the same community with a cable? Why the difference?

Senator SCHMITT. Ray, do you have——

Mr. POLVADORE. I am like Ed. I don't see any reason not to get in different businesses.

Senator SCHMITT. Do you see any reason to not allow the telephone cooperative to become a cable operator in rural areas which is, by the way, permitted by S. 898 that passed the Senate?

Mr. POLVADORE. As long as we can compete in the cities and can't wire the rural areas, we have no problems with the telephone. If they can do it, let them have the rural areas.

Senator SCHMITT. Mr. Murray?

Mr. MURRAY. I don't really know enough about it to comment intelligently, Senator.

Senator SCHMITT. But in your community, let's assume that you began to see one entity owned cable television. You don't have a television in Clovis now, but radio, newspaper. Would that be of concern to you or——

Mr. MURRAY. No. I am an advocate of free enterprise, and free competition.

Senator **Schmitt**. Well, supposedly cross-ownership restrictions were put in place in order to enhance competition? There's some——

Mr. **Murray**. You would refer, say, to, for example, a company like Bell Telephone could come in and monopolize every media of entertainment, and news as well. Yes, there needs to be some restriction on this to keep the gents like that from monopolizing everything.

Senator **Schmitt**. It might happen in a small town without even the giants. There are some big entities that Ed competes with in a sense, and others over the long period now. We are looking at policy changes, structural changes in communications law. And the last time we did this was in 1934. And one reason we have problems today is that we didn't—Congress didn't proceed to watch carefully and modernize that law as problems came along. Instead, it abrogated the authority to the courts and the FCC, who looks at very narrow issues and did not look at the broad impact of their decisions on other issues.

Bob, have you got any comments about that?

Mr. **Harris**. Yes, sir.

Senator **Schmitt**. You are neither fish nor fowl, but——

Mr. **Harris**. I am the one out of the group here that is the telephone co-op. But our situation is unique from the standpoint that the FCC takes the Bell systems and considers it as the telephone company. And then an independent telephone company is a—is another type. And then you take the telephone cooperative, and the telephone cooperative is a completely different entity within itself. It's owned, it's operated, it's regulated by its members, and has the advantages because of the rural density that we talk about in the 0.4 per route mile that some benefits from funding are available in order to provide basic telephone service.

We are in a project now to place initial telephone service to over 800 families, and the construction is in progress right now. If the regulations allowed with the technology that's available today, why go in and put in 25, 50, or 75 pair of cables. Why not put in one coaxial cable, provide the telecommunications, provide the various fuel saving controls; turn off lights and control heat while you are away, and all of these things. That just boggles the mind, because the technology is here.

But I believe that we are on top of the iceberg and do not realize what we are really sitting on, because every time that we think we are so smart, the next thing we are hit with is another portion of technology that completely is—you cannot comprehend it.

A lady says if you—if they can talk from the Moon back to here, why can't I get a phone? And we simply tell her, "You lay $4 million down here, lady, and we will start constructing it tomorrow."

But that technology that was used from the multipaths, the telemetry and the sensing, and all the other devices that we used on that had funneled down in the industry, and I believe we are going to have to look at a diversified industry instead of an individual industry, calling our telephone people, cable television people, broadcasters, whatever. I believe technology is going to be the scope of what the new act—Communications Act is, and we are going to look at some real hard questions.

Senator SCHMITT. Is that an argument against cross-ownership, and if we allow it people will—the cable and TV, and everybody will start to realize they have to reach a common ground?

Mr. HARRIS. Isn't that what was meant 2 or 3 days ago before the Ford Motor Co. and their negotiations. Their facilities that are being put in is the state of the art that we are going to have to tie on the back end of ours to make our switches work to provide the communication needs of tomorrow. Not today. We use cable, twisted pair, and we can get television, per se, over it, we can get telemetry circuits, but it's not the efficiency of the coaxial cable. The coaxial cable is the answer of tomorrow. It is the tool of tomorrow.

Senator SCHMITT. The day after tomorrow it's going to be fiber optic.

Mr. HARRIS. Well, that's the cost factor, that 's where the economics of the thing is, the fiber optics part, I would say. I am saying that cross-ownership should be allowed for open competition. And if there is some exclusion for less than 15, 2,500, or some point in there, but a farmer is a farmer whether he is raising one little box of the—what is it—hydroponics plants, or whatever they grow, the little food, or he has 40 acres. If he is doing that in a sense you cannot lump the whole thing in a capsule and say, "You cannot do this. Open it up for competition and let us all bump heads." And when it comes out, the strongest one is going to come out in the end.

I am not saying I want to bump heads with the Bell System or A.T. & T. No way. I am saying that in a community and in an environment we serve 16,000 square miles, but only 6,000 customers.

Senator SCHMITT. But still negotiating price. Carl, did you have something?

Mr. TURNER. Bob mentioned diversification. I want to remind you that after 8 days in Santa Fe and having to go back tomorrow, diversification is not the thing of the future in Santa Fe, I will guarantee you.

Senator SCHMITT. Ed, do you consider the cable service you provide as a service, an essential service or luxury?

Mr. PENA. I think a luxury. There is some essential to it, but I think there's some quite a luxury, because they can get three networks off the air, and they can get an educational channel. But people got to the place where they want more and more services, and I call it luxury, because you can only get so much news, and so many things off the air. And I'd like to go back to what they are talking here about this cross-ownership.

We are going back to the same thing of saying Mountain Bell. The first thing that comes to your mind is A.T. & T. OK? It's a monster out there, and everybody is afraid A.T. & T. comes in, well, we are all out, and that's the reason that the thing comes out that let Mountain Bell stay out of it. It's the same thing as what happened to nuclear, and you go back to the atomic bomb, and go back to Three Mile Island, and go through all these things that we are supposed to be. The atomic bomb was a very bad situation, but everything is linked to that situation, or to one situation, and, therefore, nothing else. And I think the same things come to Ma Bell. They are the atomic bomb, and we are scared of them. We are scared they are going to come in.

Senator SCHMITT. Even though it's never gone off in your community.

Mr. PENA. Right. But I have a feeling that it's going to happen.

Senator SCHMITT. What is?

Mr. PENA. Telephone taking over cable some day. I think we are going to see it.

Mr. HARRIS. We were all scared you were going to take over the telephone phase of it through cable.

Mr. PENA. I don't think we have the money that A.T. & T. has, the cable business. So this is——

Senator SCHMITT. There are already private lines services being offered by cable system?

Mr. PENA. Sure.

Senator SCHMITT. It's moving together, and the only question is, how do you make it move together as quickly as possible so the Government doesn't have to keep providing a competitive edge for every entry into the competition.

That's the thing, that's basically what we are being asked to do by every interest in communications is to maintain edges, maintain a competitive edge or give them a competitive edge, by regulation. And we all know that's impossible.

And so my general thrust, and I think it's more or less been concurred in by the Senate now, is to create, in banking legislation term, as level a playing field as possible, so that the competition can be fair and that we can sort out what is going to be the best way to provide the maximum service at the lowest cost to the American consumer.

And if cross-ownership is now preventing a level field or is preventing the creation of a level playing field of working out some of these problems between cable and broadcast and telephone, and so forth, then maybe that's something we ought to get rid of. I am not advocating it at this point, but it is a question that we must look at and try to find an answer to.

Do you—Ed, do you expect to provide a broader set of channels somewhere in the future in the systems?

Mr. PENA. Gentlemen, we are planning to go in the summer so we will be bringing in the total of 19 channels.

Senator SCHMITT. Are you looking at two-way service yet?

Mr. PENA. Not yet. Not yet, but I am sure that we got the capability of doing it by plugging a few modules in.

Senator SCHMITT. Bob, what about your system that you initiated? In the future, would it include a two-way—you implied that it would because you were going to offer them computer services of various kinds.

Mr. HARRIS. That's correct. Because the basic unit—then the technology is there, and then it becomes an engineering and economic feasibility factor as to what the density in that particular route as to whether it is a two-way or one-way receiver, yes.

Senator SCHMITT. Well, back a few decades ago, telephone was considered a luxury. That's because only a few people had them. As more and more people get broadband information services from whatever source, will they not start the—thinking of them as essential rather than a luxury?

Mr. Harris. They might have been a luxury then, but you let one go out and it seems like it's a——

Senator Schmitt. Well, we become very dependent on a luxury and it becomes essential. Now, security and first aid assistance, law enforcement assistance in rural areas, can you see a cable sytem integrated with the phone system as becoming an essential service in those areas?

Mr. Harris. The technology is available to put it on cable system, to have individual fire protection in the individual homes and businesses and vital monitoring signs, and so forth, or whether it's into the telephone system. It's a matter of which person has the initiative to go after it. But with the regulations the way they are, we are, basically by State law, we have some problems. We have to overcome those logical problems before we start even to getting into the Federal. Because cooperatives were not designed to do what they are being asked to do by members today. And so we have to come back and review even your laws logically as to what concept of the organization is. And New Mexico is not a real problem, but we have a multistate operation. We do have a few people over in Texas, like six isolated over here in one place, because it's 35 miles to the closest place that they could hookup to anyone. So we have multiple State corporation commissions to deal with, along with the FCC when we start carrying any message across the State line. Then we are in the same league with A.T. & T., and I can't believe that. But that simple rule says that we are.

Senator Schmitt. Mr. Mayor, do you see cable as providing essential services yet?

Mr. Murray. I think that essential services, as you portray them, are going to depend on, a lot, on how much they cost. Each individual subscriber, I am sure, would like to have these services, but can they afford them? That's the question.

Senator Schmitt. Well, if they became essential as a sort of chicken and egg issue—if they became essential, then I think rate regulations are appropriate.

Mr. Murray. That would depend on whether there is competition available in the market that you are talking about. And I know in the early stages it would not be because of the low density of the service charges. But down the line, you are probably right. I still like the competitive angle on things.

You know, you take there in Clovis we have a de facto monopoly by the local cable television service. The closed city commission, by ordinance, does not regulate this service, other than the fact that we regulate their rights-of-way, and we charge them an excise tax, but it's not an exclusive thing. If anybody else wants to come down, we take a look at them.

Senator Schmitt. What about current limit of 3 percent of gross revenues on the fees or excise taxes you can charge? Do you think that should be there?

Mr. Murray. I don't think there should be a limit.

Senator Schmitt. You think it's better to leave that as a negotiating thing?

Mr. Murray. Yes.

Senator Schmitt. Do you agree with our previous panel—I don't know that you were here.

Mr. MURRAY. Yes, I was here.

Senator SCHMITT. That there is a natural restraint on how high that fee can go or the city starts to—cable company will go elsewhere or will not be an available enterprise, and the city will lose the revenues?

Mr. MURRAY. I think that the marketplace will dictate that to some extent. Of course, you know each individual happenstance doesn't occur immediately; it takes time for the leveling out to occur.

Senator SCHMITT. Ray, do you have any thoughts about the FCC regulations of franchise fees?

Mr. POLVADORE. Franchise fees. Oh, I thought you were on the other thing. I have a comment on that.

Senator SCHMITT. You can please go ahead.

Mr. POLVADORE. Then I will say something on the experimental work. All our new systems we designed with small systems with 40 channels and two-way capability. We are going to try experimental with two-way and go ahead and design for two-way with the burglary alarms, fire alarms, and meter readings, and things like that, just to experiment with it and see if it will work. If it is, well we will use it in our other systems. So I think we will see cable within a very few years of everybody offering two-way services and offering diverses that we are speaking of now.

On franchise fees, I think we need to keep that limit to 3 to 5 percent. and most of the small communities where we are getting franchises we don't have a problem. They are not asking for outrageous prices. And, in fact, the city, in most cases, is working with us very well, because most people are not interested in those small systems. But as you go into larger systems, and as franchise renewals come up, I think we will see cities get hungry, and I think we need to keep it between the 3 and 5 percent. They can go up to 5 percent, here, and we see no problem with that. But I think that 3 to 5 percent still needs to be it.

Senator SCHMITT. Can you envision it going any higher than 5 percent in an open market?

Mr. POLVADORE. Yeah, I think it could, very well. Some of your large systems like Dallas, Fort Worth, San Diego, San Francisco, some of those large cities, if they need money, will come in when the franchise renewal is up, and the local operator has to go down and get a renewal, someone else will come in and offer 10 percent or 15 percent, whatever he thinks he can get a franchise with. And it's just a tool to get the local guy out. And if he doesn't come up with that kind of money, then he's going to lose his franchise. It's not there forever. It's a renewal-type thing, and if we don't have limits on it, I think we will see some problems like that.

Senator SCHMITT. Why would a—let me get it again. You think an outside group, or some other group, might buy into a franchise anticipating renegotiating later?

Mr. POLVADORE. Right. It would try to get the franchise. I think we will see down the road a lot of these large systems are going to be coming up, and they are all the time. And the local operator goes down, and local owner, and it's time for another 15-year, 20-year renewal, whatever it is, and says, "I want to renew it." Well, the city can have another franchise there or say, "Well, we want 10 percent," and if he doesn't agree to that 10 percent, they can open it up for bids and other companies can come in just by offering 10 percent, and then buy this local guy up, because without a franchise he can't operate. And so I think it will be a tool.

Senator SCHMITT. But would you offer—would the 10 percent be offered in that situation in anticipation of other types of profits that can be realized?

Mr. POLVADORE. Right.

Senator SCHMITT. On additional services?

Mr. POLVADORE. Yeah. If another operator came in and got the franchise, and he buys the plant, the facility, OK. Even if he has to pay 10 percent, he can go in and offer more services, two-way services, rebuild, and more premiums, more channels, and additional revenue. He feels like he can pay that additional 10 percent just to get the franchise.

Senator SCHMITT. What about privacy? You mentioned two-way. Are you going to make any special provisions for privacy in that system?

Mr. POLVADORE. You are talking about on return lines. Right now, we probably won't get into that part of it. When we are talking about two-way, it is experimental with burglary alarms, fire alarms, computer transfer information. But later, if we get into two-way, as far as individuals, we will have to offer some kind of privacy, some kind of jamming system foi privacy.

Senator SCHMITT. OK. Gentlemen, I think we have just about covered the range of issues that we intended to.

I am sure, as we review the testimony of both panels, that we may have some additional questions. And I hope that you will respond to them at your conveniences. Ed, do you have a comment?

Mr. PENA. I would like to ask a question, and probably this is sort of controversial, but on the co-ops, I know that in S. 898, they were excluded from the rate they charge for poles.

I don't have any problems with the co-ops that I deal with in the State of New Mexico; they are very good to work with. I pay higher pole rental than most of the other ones pay on public utilities. But I don't have that problem with it, because the reason is that they are very cooperative to work with me. But I deal with one company, one co-op out off the State. It happens to be out of State, and they charge me $6 dollars a pole, and it's impossible to work with them. It is almost impossible.

We walked in there, me and my son, to ask for attachment on one pole, and looks like we were walking in to ask them for the business. We had to change one pole in one of the communities, and the bill that they gave me to change one pole, 5 feet taller, was $2,148. It was cheaper for us to go underground, bore under a street, than go that route. And I don't mind paying for—we want to pay, we don't want to take nothing for free. I am sure they got those poles. Those poles cost them money, and I wanted to pay for the poles, you know, in a reasonable way, in a reasonable rate. But when they become almost unbearable to work with, the community suffers. The community suffers because the reason is that they are not willing to cooperate, and I am having that tremendous problem right now with one co-op.

Senator **Schmitt.** Ed, the provisions that you are referring to is in current law. We did not take a position one way or the other in S. 898.

It was proposed that we do that, but it was decided, because we had not held these kinds of hearings and examined the cable issues in any significant depth, that we would withhold dealing with those issues in S. 898 and do it under separate legislation if it was necessary to do so.

What you referred to, just for the record, to clarify the record, is current law. And it's a question of what happens to that in the future.

But I understand your frustration with that kind of a situation, and I suspect that everyone here would share it with whichever—whether cooperative or otherwise that that kind of situation develops. Carl?

Mr. **Turner.** Senator, I think it is eminently unfair for accusations like this to be made without an opportunity to refute them. I would like to find out from the persons testifying what the situation is so we could have an opportunity to put our testimony in the record. Because I think that's only fair.

Senator **Schmitt.** You have that opportunity. The record will be open for 2 weeks.

Mr. **Turner.** Thank you. Ed, would you give me the situations so I can——

Mr. **Pena.** This is out of the State, so it wouldn't be in the State. I've——

Mr. **Turner.** I understand that, and I know the co-op that you are talking about, but I think a co-op is a co-op whether it's New Mexico, Texas, or——

Mr. **Pena.** I have no problems with that.

Mr. **Turner.** Well, my note, Ed was—and it says, "You should get word from the New Mexico Public Service Commission. I will be glad to help you on the thing."

My point, Senator, is that we would like to have the opportunity.

Senator **Schmitt.** You will have that opportunity, OK?

Mr. **Turner.** I will have the opportunuity if I can find out from him what the situations are.

Senator **Schmitt.** I am sure Ed will give you the situations.

Mr. **Turner.** I will buy him a drink and he can tell me.

Senator **Schmitt.** Any other comments? Thank you very much.

[Thereupon, the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF VINCENT P. SLATT, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Mr. Chairman and members of the Committee, my name is Vincent P. Slatt. I am Manager of Inland Power & Light Company and Manager of Northwest Rural Electric Cooperatives.

I appreciate this opportunity to participate in this hearing and appear here today to express the views of the Northwest cooperatives and all other member systems of the National Rural Electric Cooperative Association (NRECA) regarding proposed changes in the Federal Communications Commission's jurisdiction over cable television pole attachment agreements.

NRECA is a national service organization representing more than 1,000 rural electric systems in 46 states. These systems, mostly all cooperatives, serve more than 25 million consumers in 2,600 of the 3,100 counties in the United States. Members of NRECA provide electricity to about 75 percent of the land area of this nation. NRECA's member systems own and maintain over 50 percent of the electric utility poles in the Continental United States.

At our San Francisco annual meeting on January 29, 1981, our membership unanimously adopted the following resolution which sets out NRECA's official position on pole line attachments:

"Federal Regulations of Pole Line Attachments: Regardless of any legislation which may be passed vesting regulations of pole line attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric co-ops or not, is bad legislation, and pole line attachment matters should be a matter of contractual arrangements between interested parties; and if any government regulation is deemed necessary, it should be at the state level only. We urge the NRECA staff to take such measures as may be necessary to support this position."

The rural electric cooperatives are firm in the view that pole attachments are matters of contract between the owners of the poles and the telephone, CATV or others who wish to make attachments to the poles of our member systems. The soundness of this position was recognized and supported by the Congress in the Committee Report (95-580) of the 1977 Act, and I quote: "cooperative utilities charge the lowest pole rates to CATV pole users". In testimony presented to the Senate Committee at that time, NRECA demonstrated on behalf of our member systems that (1) rural cooperatives have always been willing to permit others (telephone and CATV) to utilize space on REC poles not required for the delivery of electricity to our members; and (2) annual charges for the use of REC poles were found to be most reasonable. In 1977 the average charge was approximately $3.00 per pole per year. The Federal Communications Commission observed at that time that charges were the lowest in the utility industry.

A recent survey conducted by NRECA revealed that this is still the case. This survey, completed in the Fall of 1981, showed that the average annual rental charge for pole attachments to REC electric power systems was $3.60 for CATV.

Although rural electric cooperatives are not regulated by the Federal Communications Commission, we feel compelled to express our views about the FCC's interpretation of the formula suggested by the Senate Committee in its 1977 report on the Communications Act. A discussion of FCC Interim Rate Setting in the Senate Report on S. 1547 is attached.[1] Everyone in the electric utility industry knows that safety requirements for the electric utility industry mandates at least 40 inches of clearance for any communications equipment attached to an electric power pole. Despite this regulation which must be complied with by the utility, be it rural cooperative, municipal, or a power company, the FCC arbitrarily selected 12 inches as the appropriate space on which to base its charges for pole attachments. In my mind, this is an obvious oversimplification of the charges in favor of CATV. Simply stated, this automatically reduces the rate for annual charges by the ratio of 12 inches to the length of the pole, instead of the 40 inches which must be provided to meet safety requirements. As a result, the annual charge is so low (estimated to be about $1.70) that it fails to cover normal maintenance of the electric utility system which is attributable to CATV. Therefore, this means that the rural electric cooperative, municipal, or power company, or whoever owns the pole, is subsidizing the CATV industry. We believe this is unfair and unnecessary. This further supports our fundamental position that pole attachments are and should remain contract matters between the owners of the pole and the CATV, telephone company or others that desire to attach cables or lines to REC poles.

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[1] The material referred to has been retained in the committee files.

Finally, it is indeed difficult for us to understand that at a time when the Administration is determined to reduce the regulatory burden placed on American taxpayers by the Federal Government, the CATV industry is urging Congress to require regulation of pole attachments by the Federal Communications Commission. In our opinion, this is wrong and would burden the FCC with a very large number of pole attachment contracts which would have to be reviewed.

I would like to add that the Rural Electrification Administration (U.S. Department of Agriculture) has always encouraged the joint use of REC utility poles. In fact, REA policy bulletins on joint use facilities mandate that the costs for such equipment must be allocated fairly or loan funds for the transmission line will be denied. Therefore, if RECs are placed under the restrictive FCC rate formula, we may well be in danger of losing loans for necessary distribution facilities. Additionally, REA currently must approve all joint use agreements to insure that costs are allocated equitably among the users.

We wish to reaffirm our position which has been constantly held by our member systems, i.e., simply stated, we are more than willing to accommodate the CATV, telephone and others who need to make attachments to rural electric poles. However we believe that this should be a contract matter between the owner of the poles and the party that wishes to use them.

Speaking on behalf of the National Rural Electric Cooperative Association and all of its member systems I reaffirm our determintion to oppose any effort to compel our member systems to be regulated by the Federal Communications Commission. Our long record of reasonable charges for pole attachments clearly indicates that such regulation is unnecessary. Further any regulation required should be done at the state level.

I thank you for the opportunity to present this statement and to participate in this hearing.

STATEMENT OF JAMES M. BEAULAURIER, ASSISTANT ATTORNEY GENERAL, CONSUMER, ANTITRUST AND CRIMINAL LITIGATION DIVISION, OFFICE OF THE ATTORNEY GENERAL

Thank you for inviting me here. My comments today will be directed to a subject which should be of interest to any of you who have been involved or who are presently involved in granting franchises to cable television operators.

INTRODUCTION

To say that the area of cable television franchising and regulation currently is undergoing dramatic changes is a profound understatement. Developments occur at such a rapid pace that it is nearly impossible to keep abreast of them, and even more difficult to respond effectively to those developments. Among the most important of the recent developments in the cable television industry is the current FCC deregulation of cable television which by default places all responsibility for monitoring and regulation on local government and particularly on municipalities.

The basis for a municipality's power to regulate cable television is the power to grant franchises to cable operators who need permission to use city streets in order to string their cables. The recent boom in cable television franchising by cities presents legal problems which are unique and extremely troublesome. Across the country, cities are grappling with cable television issues in various ways in an effort to provide their citizens with all the benefits that cable television promises.

My purpose in speaking with you today is to suggest that what has become the orthodox approach to cable television franchising may lead your cities into a minefield of antitrust hazards, potentially subjecting the city and its officers and council members to personal liability for huge legal expenses and treble damage awards. I also suggest that this orthodox approach may deny the citizens of your cities the best that cable has to offer by fosternng local monopolies that are unresponsive to customer demands and slow to adopt technological innovations.

The orthodox approach has been to grant non-exclusive street-use franchises to a single cable company which is selected by means of a bidding process. The problem with that approach is that the winning company thereafter can easily achieve a natural monopoly position in the local market simply by installing its cable in the financially attractive sections of town and soliciting customers. Once the prime territory has been penetrated and cable installed, few if any potential competitors would believe that an attempt to also penetrate that market and to install a parallel cable system could be profitable. As a practical matter, unless the potential rival's system or programming would be distinctly more desirable to customers, and would cause them to switch service and pay another installation fee, then the rival could only look forward to the unfavorable prospect of incurring the same installation expenses as the original company, but receiving many fewer subscriptions and much less revenue for its efforts.

Judging by what has happened in Washington, few companies have considered "second fiddle" to be financially worthwhile. As a result, Washington cities and towns have created *de facto* cable television monopolies solely by granting nonexclusive franchises to one company. As I will explain, the city's role in establishing a cable television monoploy may subject it and its officers and councl member to liability for treble damages under the antitrust laws.

In addition a city can be exposed to antitrust liability in other ways. For example, the city may decide to adopt a districting approach to franchises, dividing the city into districts and granting separate franchises for each district. If at the same time the city seeks to regulate subscription rates and to maintain parity of rates among the various districts, the city may be engaging in price fixing. For another example, if a city has previously granted a citywide franchise, but now wants to adopt a districting approach in order to allow another company to compete side-by-side, any effort by the city to prevent the original company from expanding into an undeveloped area could impose treble damage liability.

These examples by no means exhaust all the potential hazards. As I said before this area is an antitrust minefield.

There is a route, however, which I believe you and your clients can follow and avoid most if not all of the risks presented by cable television franchising. Simply stated, I recommend that at the minimum you require any cable company which seeks a franchise or a franchise renewal both to install cables which have the current maximum channel capacity of 50 or more channels and also to hold a portion of that channel capacity available on reasonable terms for competing cable programmers.

By these franchise conditions you can avoid the *de facto* monopoly which inevitably results from the typical franchise arrangement. A cable system which carries signals from two or more competing operators will provide your citizens with a greatly enhanced variety of programming at competitive rates. At the same time the city occupies a much less prominent and less hazardous role in the cable television enterprise.

Having thus briefly pointed out the real problems that you face and having suggested a possible solution, I will now expand on both.

Review of significant developments in cable television industry

In coming to grips with the problems presented by cable television we need to know what cable television is and what it is likely to become. Any rational approach to franchising problems much take into account both the state of technology and also the economics of the industry.

At the present time cable television is rapidly expanding and developing. I understand that most of the major cities and towns in Washington have already granted cable television franchises. On the national level, a franchising boom has been underway for several years.

This accelerated development is the product of technological innovations and industry deregulation. Telecommunication satellites now make available an enormous variety of programming on a nation-wide basis. That increased programming can be carried over cables which now have the capacity for 50 and even 100 channels, with even greater capacity predicted.

Of course, what really sets cable apart from other broadcast media is its interactive capability. Interactive refers to the ability of a subscriber to utilize the cable network in order to receive and transmit data, to be polled at home, to be connected to burglar and medical emergency alarm systems, to conduct banking activities, to pay bills and even to shop for and purchase products and services. If we believe the industry press, such services will soon be commonplace. In time, cable televison may become essential to the delivery of private and public services.

At the same time that the industry is undergoing such dynamic progress, the Federal Communication Commission (FCC) has virtually abandoned its one-time role as industry regulator. As a practical matter, since deregulation local governments have been given the responsibility of overseeing the development of cable television.

Unfortunately, the almost universal approach of local governments has been to accept the industry contention that cable television is a natural monopoly and therefore is entitled to treatment as a quasi-utility. Because the natural monopoly theory has been widely accepted it has been a self-fulfilling prophesy.

As a so-called natural monopoly, cable television occupies a unique niche in our economic system. Cable television is not a utility since it does not provide a service which is considered a necessity of life such as electriicty or water.[1] Yet, the treatment of cable television on the local level has some of the trappings of utility regulation. The cable company is given a *de facto* monopoly to service the city or town and city officials attempt to regulate the installation rates and subscriber fees so that the monopoly position is not abused.

No doubt, this approach is undertaken with the purest of motives in an effort to deal with a difficult situation. Virtue is its own reward, however, and does not constitute a legal defense when the city and its officers and council members are sued for restrainting trade or monopoly. As I believe you will understand when I am finished, it is not at all clear that a city or its representatives can be protected from an antitrust challenge to the current franchising approach.

Antitrust problems in cable television franchising

No one in this room needs to be told that the Supreme Court's decision in *City of Layfette* has drastically altered the landscape of municipal antitrust immunity. In the wake of *City of Layfayette* and its progeny including *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*,[2] any municipality which establishes a monopoly or participates in a restraint of trade will not be immune from antitrust liability unless it can demonstrate both that the challenged restraint or monopoly is "one clearly articulated and affirmatively expressed as state policy" and also that "the policy [is] actively supervised by the state itself."[3]

Washington state has no affirmatively expressed policy that cable television should be allowed monopoly status or that cable television need not adhere to the competitive standards which apply to other commercial activities in the state. And of course there is no active supervision by the state over any aspect of cable television or city franchises. As a result, I do not think that the *Parker* v. *Brown* state action immunity doctrine provides any protection for a city's potentially anticompetitive role in the business of cable television.

In fact, the only pertinent state policy which is clearly articulated and affirmatively expressed is the policy which broadly prohibits monopolies and restraints of trade.[4]

In addition to the examples I described in my introduction today, a city conceivably can run afoul of state and federal antitrust laws by granting one franchise candidate's application and not another. Such conduct could be characterized as conspiracy between the city and the successful applicant to create a monopoly for cable television in violation of Sec. 2 of the Sherman Act and RCW 19.86.040 of the state antitrust statute. The same challenge could be made to the renewal of a pre-existing franchise.

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[1] *Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 574, 611 P.2d 741 (1980).

[2] 445 U.S. 97, 63 L.Ed. 233, 100 S.Ct. 937 (1980).

[3] *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., supra* 63 L.Ed.2d at 243.

[4] RCW 19.86.030 and RCW 19.86.040, The Unfair Business Practices—Consumer Protection Act.

When you consider the expenses incurred by a franchise applicant in the course of seeking a franchise, the political nature of franchise granting procedures and the potential economic benefits to the successful franchise applicant, it is surprising that an antitrust challenge has not yet been undertaken by an unsuccessful applicant.

In order to succeed in an action alleging a conspiracy to monopolize the successful applicant must prove that some joint action involving the city or its representatives was taken with the specific intent to create a monopoly and that an overt act was committed in furtherance of that intent.[5]

In the franchise grant or renewal situation, the granting of the franchise and its acceptance by the successful cable company would satisfy the joint action and overt act requirements. And in the case where only one franchise is awarded there is hardly room to argue that a monopoly was not intended since that is the inevitable effect of granting a single franchise. Once a plaintiff proves these elements of the conspiracy to monopolize offense, your city, its officers and council members may be facing liability for treble damages and for the plaintiff's costs and attorneys fees.

The only conceivable defense to such an action is based on a natural monopoly theory. In some cases the courts have taken into account that in certain markets a monopoly may be the inevitable result of competitive forces and therefore should not be punished under the antitrust laws. In certain "thin markets" the expense of producing a product or offering a service may be so large in comparison to gross revenue that only a single firm could survive in the market.[6] The present franchising approach appears to be based on the assumption that cable television is such a natural monopoly.[7] I am not aware, however, of any economic or empirical studies which have established that in every market cable television would be a natural monopoly.

In fact, the only court which has specifically addressed the issue in the context of cable television has concluded that cable television is not a natural monopoly and that "the evidence is that there can be competition in the marketplace, with the choise of price and service left to the consumers." [8]

In addition, the mere assumption that cable television would develop into a natural monopoly is insufficient as a legal defense. To succeed with that defense the city must prove that the particular market in question will only support a single firm.[9] Unless there is a history of competition between firms in the market which has developed into a single firm achieving a natural monopoly, proving that a monopoly is inevitable may be a difficult task. If another cable television firm wants the opportunity to compete in the market, the city may be compelled to grant them a franchise as long as the firm is capable of complying with the reasonable requirements of the franchise. The Supreme Court has suggested that the public has "an interest in competition even though that competition may be an elimination bout." [10]

It may well be the case that some municipalities in Washington are "thin markets" for cable television and could only support a single firm. Nevertheless, it is risky business for any local government to grant a *de facto* exclusive franchise on the bare assumption that a natural monopoly is inevitable.

Such an approach to franchising is made even more undesirable by the presence of practical alternatives which avoid many of the administrative burdens and most of the serious antitrust risks presented by the traditional approach.

Alternate approach to cable television franchising

From the standpoint of the city and its residents the most desirable market structure for cable television would be head-to-head competition among several cable programmers, each of whom would have the capability to transmit signals to a potential subscriber. Residents would then be able to select from among a variety of program packages, choosing to receive only one or perhaps all available packages. Because of the existence of real competition for the subscriber's dollars, the cable operators would be compelled to provide programming which responds to customer demands at rates that could not exceed competitive levels. The city would avoid any responsibility to regulate rates and would only need to be concerned that the installation of cables meets the requirements of the franchise.

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[5] *American Tobacco Co. v. United States,* 328 U.S. 781, 66 S.Ct. 1125, 90 L.Ed. 1575 (1946).

[6] *United States v. Aluminum Co. of America,* 148 F.2d 416 (2nd Cir. 1945).

[7] *Lamb v. Toledo Blade Co.,* 461 F.2d 506 (6th Cir. 1972).

[8] *Community Communication v. City of Boulder,* 485 F.Supp. 1035 (1980), rev'd on other grounds 630 F.2d 704 (1980), certiorari granted ——— U.S. ———, 101 S.Ct. 1756, 68 L.Ed.2d 236 (1981).

[9] *Hecht v. Pro-Football, Inc.,* 570 F.2d 982, 991 (D.C. Cir. 1977).

[10] *Union Leader Corp.* v. *Newspapers of New England, Inc.,* 284 F. 2d 582 (D.C. Cir. 1960).

Not only is such a cable system technologically possible but also it may be the practical answer to the problems that I have previously described.

The two basic obstacles to promoting head-to-head competition at the present time are: (1) the limited channel capacity of most cable that is in use and (2) the unavailability of any unused channels to potential competitors. If a city was strung with cable which had the capacity for 50 to 100 channels, several cable companies could transmit their program packages over the same cable. In such a system, each potential subscriber could then choose from among the various packages being offered and select the package or packages which best respond to their needs.

Of course, a cable television firm has no incentive either string cables with excess channel capacity or to make any unused channels available to competitors. But a firm would probably agree to string 50 or 100 channel cable if that agreement was a condition to receiving a street-use franchise. Furthermore, if required to do so as a condition to receiving a franchise, a firm would probably agree to make a pre-determined number of channels available for lease or sale on reasonable terms to other cable programmers. The revenues obtained from leasing or selling the unused channel capacity would be used to defray the expense of installing the more expensive 50 or 100 channel cable. If the term of the franchise was a relatively short period of time, then the original cable firm would have a substantial incentive to lease or sell its excess channel capacity in order to more rapidly defray its capital expense of installing the more expensive cable.

Using this approach a city can foster competition in cable television services to the greatest extent possible simply by including these two conditions in the street-use franchise and by shortening the term of the franchise.

The opportunity exists for adopting this alternate approach to franchising even if you are midway through the term of a 10 year franchise. A compelling argument can be made that under the antitrust laws the existing franchise is an illegal contract to establish a monopoly and is therefore unenforceable and should be renegotiated. If you decide to undertake such an effort to renegotiate an existing franchise bear in mind that the cable operator's exposure under the antitrust laws for conspiracy and attempt to monopolize and for monopolization is as great as or greater than the city's exposure. The cable operator's desire to avoid drawing attention to a potential antitrust violation may render them willing to renegotiate the existing franchise without serious opposition.

In addition you can tell your local franchise holder that cable monopolies are under scrutiny in this state and to the extent that a cable operator takes overt actions to protect a monopoly position and to prevent any opportunity for competitive entry into the local market it faces the possibility of a civil enforcement action by the state Attorney General seeking civil penalties of $25,000 for each violation, injunction and costs and attorneys fees under state antitrust law.

The alternate franchising approach I have described is just one of several available alternatives to a *de facto* cable monopoly. You may want to consider the possibility of municipal ownership of the cable distribution system. As owner of the system the city could install high capacity cables and lease or sell portions of that capacity to several cable programmers. Of course if a city takes that approach a special effort should be maintained to foster and promote competition among the cable programmers in order to avoid a monopoly challenge directed at the city.

A better approach would be to grant franchises to firms that were engaged in cable installing functions but which were prohibited by the terms of the franchise from engaging in cable programming or affiliating in any way with a cable programming firm. In that way the city could deal with a firm that was engaged primarily in cable installation and maintenance and that had no incentive to create or promote a programming monopoly. If as a condition of the franchise the firm was required to install high capacity cables and to limit the number of channels which it could lease or sell to a particular cable programmer, then the cable installer woud actively seek several purchasers for its available channel capacity and would thereby promote head-to-head competition. The chief advantage to this approach is that the city's involvement in the cable television enterprise can be kept to a minimum, thereby reducing both its antitrust risks and its administrative and regulatory burdens.

Better yet, a city could offer franchises to more than one cable installer, thereby fostering competition, both on the cable installation level and also on the programming level.

CONCLUSION

I am confident that as time goes on and more attention is focused on the problem of fostering local competition in the cable television industry, solutions will be discovered, some of which may be better suited to your individual circumstances than the proposals that I suggest today.

I urge you to consider the very real risks that I have described and to undertake a reevaluation of the traditional approach to cable television franchising. By taking affirmative action to deal with the antitrust problems presented by cable franchising not only will you avoid the risks of substantial liability for your municipalities and local officials but also you will vastly increase both the quantity and the quality of cable programming which is potentially available at competitive rates to cable television subscribers in your cities and towns.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY,
Wenatchee, Wash., January 14, 1982.

Senator SLADE GORTON,
Federal Building,
Seattle, Wash.

DEAR SENATOR GORTON: The commission and management of Public Utility District No. 1 of Chelan County are greatly concerned over the attempt by cable television companies to have federal regulations established to control the pole-attachment fee agreements between municipal systems and the cable television system operators. It is obvious that the cable television organizations which are now becoming large nationally-owned companies feel that they cannot only establish a right to utilize the property of other utilities but also to have the use fees regulated at the federal level, thereby obtaining more favorable fee agreements.

We have over a 30-year history of negotiating and establishing pole-use agreements with telephone companies, a variety of both local and nationally-owned cable television organizations and other agencies which have a need to attach communication circuits to District poles. Our rates for these agreements are based on the premise that these agencies or utilities are renting space on District poles and our fees are based on those entities paying a proportionate share, according to their use, of the District's cost of installing and maintaining the structure.

We currently have pole-attachment agreements with three separate television cable companies, two telephone companies, the Burlington Northern Railroad, and several agreements with small municipals in the county who utilize our structures for fire alarm circuits and various city control circuits. The intrusion of federal regulations into what is, in our opinion, a purely local matter is totally unwarranted and would certainly result in additional cost to the ratepayers of Chelan County. The present agreements are reviewed and approved by our locally elected Board of Commissioners who are responsible for and direct the operations of this Public Utility District.

We would request that you make every effort to eliminate from any proposed cable television legislation, sections which would grant federal agencies any authority in the area of pole-attachment agreements. It is our opinion that any such legislation would be detrimental to the ratepayers of Chelan County and would result in horrendous accounting and enforcement problems for the federal government.

Very truly yours,

HARRY B. WAGNER
(For Gerald L. Copp, Manager).

Your Seattle City Light,
Seattle, Wash., January 15, 1982.

Re Federal regulation of attachment fee agreements between municipal electric systems and Cable TV operators.

Senator Bob Packwood, Senator Slade Gorton,
Senate Commerce Committee, Federal Building,
Seattle, Wash.

Dear Senators Packwood and Gorton: I am submitting this testimony on behalf of the Seattle City Light Department and the 274,000 customers served by it. Seattle City Light is the largest publicly owned electric utility in the Pacific Northwest. It is a nonprofit corporation with a high density distribution system—2,985 miles of distribution lines in only 131.31 square miles.

Seattle City Light is currently exempt from regulation of CATV pole attachment rental fees by the Federal Communication Commission (47 USC 244) and the Washington Utilities and Transportation Commission (RCW 80.54 et seq.). City Light is operated under the control of the Seattle City Council and the Mayor of the City of Seattle. This control is specifically permitted by the Washington State Legislature in RCW 36.92.050, legislation which provides for the setting of electrical rates and equipment rental fees. Since 1968, City Light has had pole attachment agreements with many CATV operators in its service area; the contracts have governed the rental fees to be paid by CATV operators.

In the past several years, pole usage and associated costs have risen significantly. Past rental fees no longer cover City Light's expenses. Seattle City Light is a nonprofit corporation, publicly owned, which provides essential services to 620,000 people. Because the CATV is a luxury and nonessential entertainment service, City Light has become concerned and alarmed that it is extensively subsidizing the for-profit CATV corporations. City Light believes it is patently unfair to require the user of an indispensible service, such as an electric utility, to subsidize any portion of the cost of a luxury entertainment service, especially when a large portion of the electric utility's customers are poor and cannot afford CATV or even have it available to them. This is exactly what the existing federal law (47 USC 244) does. It prevents a pole owner who comes under the FCC jurisdiction from charging the CATV operators a rate that reflects the cost of service. The difference in the federally imposed rental fee and the actual cost of service is a direct subsidy to the CATV operator. To impose this subsidy on municipal, nonprofit, electric utilities by subjecting them to existing federal regulation requires them to subsidize a for-profit corporation.

The cost of service for a CATV attachment can be different for each utility that owns poles. For example: A rural communication company may require short poles scattered over a large service area with large spacing between poles. They may require no safety spacing. Such a system may conceivably have a lower pole cost and a lower cost of service. On the other hand, an urban electrical company would require taller poles due to State-required safety spacing between the CATV attachment and the electrical system. (This spacing is determined by the electrical capacity of the electrical system; i.e., 4 KV, 13 KV, or 26 KV.) There is no surplus space on a utility pole. Therefore, when a new cable attachment is made and a pole is not tall enough, it must be completely replaced.

The concept that a CATV merely attaches its cable to surplus space on a utility pole completely ignores the cost that is incurred in owning a distribution pole and the annual operating, maintenance, and administrative expenses relating to these poles in service.

Some of the costs incurred annually are as follows:

1. Interest.
2. Plant depreciation.
3. Plant investment.
4. Distribution operating and maintenance expense.
    - (a) Fielding and mapping of pole contact applications.
    - (b) Pole maintenance, inspection and replacement.
    - (c) CATV inventory and billing.
    - (d) Tree trimming and brushing.
    - (e) Emergency dispatching.
5. System administration and general expenses.
6. Taxes (gross revenue, leasehold and B & O).

All of these factors should be considered when developing a rental fee for pole attachments. As Superintendent of City Light, I believe that a pole attachment rental fee should recover an appropriate share of the cost of owning, operating and maintaining its poles. The existing Federal legislation limits the CATV operator's cost to one foot of space per pole. It ignores the safety clearance requirements caused by the installation of the CATV attachment and the CATV share of the required support. I believe that the regulation of CATV pole attachments rental fees for pole attachments to municipally owned utilities should remain with the elected officials of the City and their appointed managing officers.

In 1978 the cost of maintaining a 47.6 foot pole was $35.81 per year. City Light's CATV attachment rates did not change from 1966 to 1980. From 1966 to 1981 inflation has increased 144% and CATV companies have increased their user rates approximately 95%. Therefore, I recommend that this committee reject any request to have Congress withdraw its exemption for municipally owned utilities to regulate pole attachments. This is the only way to assure that corporations for profit pay their fair share of pole attachment costs and avoid a direct subsidy by nonprofit municipally owned utilities to CATV operators.

City Light has conducted an extensive review of the various cost-of-service methodologies. It has reviewed an analysis of Washington Public Utility District rental fees and has concluded that the federally developed rental fees would require CATV operators to pay a fee that is approximately half of the actual cost of service. I have attached a copy of the City Light report for your reference.

Again, I urge you not to recommend that pole attachment rental fee agreements between municipally owned electrical systems and CATV operators be federally regulated. I believe that our concerns are shared by other utilities and citizens of the Pacific Northwest, especially those poor persons in our service areas who must purchase electric services for life support but are financially unable to use Cable TV. I appreciate the opportunity to discuss Seattle City Light's concern about this matter and will look forward to the opportunity to assist you in any way or answer any of your questions.

Very truly yours,

JOSEPH P. RECCHI,
Superintendent.

Enclosure.

MEMORANDUM

Date: January 14, 1980.
To: Joseph P. Recchi.
From: C. T. Rockey.
Subject: Pole attachment rates.

Seattle City Light has statutory authority to operate Utility per RCW 35.92.050, Seattle Ordinance 107787 and Ordinance 106416 as amended.

The use, control and price of electricity as authorized by RCW 35.92.05 is determined by the Seattle City Council. However, the rates for use of City Light equipment and property are set by the utility. Ordinance 106416 in Section 13 amended provides authority for the utility "to adopt and file as appropriate, rules, policies and procedures relating to its performance of provisions of 'the rate ordinance' and to the operation of the City's light and power system." Section 6 provides that "The Department shall have authority to and may provide for the installation and servicing of appliances for the sale and rental of equipment, for the sale, lease, construction, installation, operation and/or servicing of materials supplies, facilities or equipment for the use of conservation of electricity, and may establish and collect charges therefor based on cost, conservation and/or use of electricity and enter into agreements in connection therewith." Therefore, City Light has the statutory authority to set the rates for the rental or leasing of equipment.

HISTORY

The last rate set for the CATV pole attachment was in 1966. The rate set was $3.00/pole/year. The following formula was used to determine this rate:

$$\text{Cost/pole} = \text{New pole cost} \div \text{life of pole} \div \text{no. of uses}$$

Since this rate has not been changed since 1966, it becomes necessary to adjust the rates to reflect current cost in order to avoid potential conflicts with

Article XIII, Section 7 of the Washington constitution, which provides in relevant part as follows:

"No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation . . ."

The current federal and state laws, although not applicable to the City of Seattle, were reviewed and are set out herein as a matter of reference.

47 USC 224

Sec. 224. Pole attachments—Definitions.

(a) As used in this section:

(1) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any state.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

Authority of Commission to regulate rates, terms, conditions: enforcement powers; promulgation of regulations.

(b)(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

State regulatory authority over rates, terms, and conditions not pre-empted by activities of Commission; certification of State regulation to Commission.

(c)(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

Determination of just and reasonable rates; definition.

(d)(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

Termination date for applicability of criteria for determination of just and reasonable rates.

(e) Upon the expiration of the 5-year period that begins on February 21, 1978, the provisions of subsection (d) of this section shall cease to have any effect.

RCW 80.54.010-070—ATTACHMENTS TO TRANSMISSION FACILITIES

CHAPTER 80.54—ATTACHMENTS TO TRANSMISSION FACILITIES

80.54.010 Definitions.—Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone, or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power. and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television, or communications right-of-way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility which authorized to construct attachments upon, along, under, or across the public ways.

(3) "Utility" means any electrical company, telephone company, or telegraph company, as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

80.54.020 Regulation of rates, terms and conditions.—Criteria. The Commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms, and conditions, made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient.

80.54.030 Commission order fixing rates, terms, or conditions.—Whenever the Commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the Commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made.

80.54.040 Criteria for just and reasonable rate.—A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.

80.54.050 Exemptions from chapter.—Nothing in this chapter shall be deemed to apply to any attachment by one or more electrical companies on the facilities of one or more other electrical companies.

80.54.060 Adoption of rules.—The Commission shall adopt rules, regulations and procedures relative to the implementation of this chapter.

80.54.070 Uniform attachment rates required within utility service area.—Notwithstanding any other provision of law, a utility as defined in RCW 80.54.010(3) and any utility not regulated by the utilities and transportation commission shall levy attachment rates which are uniform for all licensees within the utility service area.

CALIFORNIA PUBLIC UTILITIES CODE

"767.5. As used in this section, the term 'public utility' includes any person, firm, or corporation except a publicly owned utility which owns or controls poles, ducts, conduits, or right-of-way used or useful, in whole or in part, for wire communication.

"The term 'pole attachment' means any attachment for wire communication on or in any surplus space on or in any pole, duct, conduit, or other support structure located in any right-of-way owned, controlled, or used by a public utility.

"The legislature hereby finds that many public utilities have, through a course of conduct covering many years, made available the surplus space on and in their poles, ducts, conduits, and other support structures for use by the cable television industry for pole attachment service, and that the provision of such pole attachment service by such public utilities is and has been a public utility service.

"Whenever a public utility and a cable television corporation are unable to agree upon the terms, conditions, or compensation for pole attachments or the terms, conditions, or cost of the production of surplus space needed for pole attachments, then the commission shall establish and regulate the rates, terms, and conditions for pole attachments and the terms, conditions, and costs of providing surplus space needed for pole attachments so as to assure a public utility the recovery of not less than all the additional costs of providing and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the public utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities."

The City Light review of the federal guidelines would result in a rate of $3.44 per pole per year. That formula requires that a rate is just and reasonable if it assures a utility the recovery of not less than the additional cost of providing pole attachments, nor more than an amount determined by multiplying the percentage of total usable space which is occupied by the sum of the operating expenses and actual capital cost of the utility attributable to the entire pole.

$$\text{rate} = \text{usable space} \times \text{operating expenses} + \text{actual capital cost}$$

CATV's usable space on 4-kv and 26-kv poles,

$$0.4 \times 1/7.5 + 0.6 \times 1/14 = 9.62\%$$

$$\text{or rate} = 9.62\% \times 3{,}581{,}078 \div 100{,}000 = \$3.44/\text{pole}/\text{year}$$

Utilizing the Washington State criteria, which provide that a just and reasonable rate shall assure the utility the recovery of not less than all the additional cost of procuring and maintaining pole attachments nor more than the actual capital and operating expenses, including just compensation of the utility attributable to that portion of the pole used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities, typical pole and cost estimates are as follows:

1. *Description of a typical pole:* A 47.6' pole of which:
(a) 22 feet are required for ground clearance;
(b) 1 foot is needed for the CATV attachment;
(c) 7.0 feet are buried for support;
(d) 4 feet for separation clearance: and
(e) 13 feet are occupied by City Light.

2. *Cost Estimate:* The annual cost to City Light of owning and maintaining such a pole is $35.81/year.

(a) Plant investment in poles, crossarms, brackets and guy wires	$16, 852, 434. 73
(b) Less accumulated depreciation	(5, 792, 978. 53)
(c) Net plant as of December 31, 1978	11, 059, 456. 20
(d) Number of poles=100,000 (Engr. est.).	
(e) Total distribution system maintenance for 1978	[1] 4, 141, 680. 00
(f) 1978 depreciation expense (rate 25 year)	674, 097. 00
(g) 1978 interest	[2] 606, 097. 00
Total	5, 421, 874. 00

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[1] Includes supervision, maintenance of distribution structures and equipment; overhead, underground lines; transformers, and street lighting. The present breakdown of City Light plant accounts is established in accordance with Federal Energy Regulatory Commission Chart of Accounts and does not provide an itemized breakdown of information of pole operation and maintenance. See sections 593 and 364 of.

[2] Allocations based on a percentage of new interest to net long-term debt, or 3.6%.

Therefore, for a typical 47.6′ pole the CATV use ratio is:

17.5/47.6=36.76%

	Pole length (feet)	CATV	City light
Buried	7	3.5	3.5
Ground clearance	22	11.0	11.0
CATV attachment	1	1.0	0
Safety clearance	4	2.0	2.0
City light	13	0	13.0
Total	[1] 47	17.5	29.5

[1] 0.6 ft unaccounted for.

The percentage of usable space attributable to the portion of the pole used for the pole attachment is 0.3676, which would result in a pole rate of:

rate=36.76%×3,581,078÷100,000=$13.16/pole/year

Utilizing the criteria developed by the Public Utilities Commission of the State of California, cost per pole is as follows:

"The maximum rate that the California Commission may fix by Statute is a rate not 'more than the actual capital and operating expenses, including just compensation, of the public utility attributable to that portion of the pole . . . used for the pole attachment,' including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain to the owner . . . of the subject facilities." (Section 767.5, California Public Utilities Code.)

The language of the California Public Utility Code pole attachment criteria and the Revised Code of Washington, Chapter 80.54, Attachments to Transmission Facilities, are verbatim.

The California Utility Commission considered two methods of allocation of cost. The first method was based on the theory of usable space. The Commission defined "usuable space" as the space physically occupied. The Commission assumed that two crossarms are mounted on the typical 40-foot pole (each slightly less than 6 inches tall). Thus, the usable space was defined as 1.5 feet (1 foot for crossarms and .5 feet for CATV attachment). Under this theory, two-thirds of the total annual cost of owning and maintaining a pole (⅔×$30.24) or $20.16 was attributed to the utility use, while the third of such cost, or $10.08, was attributed to the CATV attachment. Under this theory, the cost-based rate per pole per year would be $10.18.

The second allocation method defines usable space as the space preempted by each user. The CATV's use of 1 foot of pole space to attach its cable results in preemption of an additional 4 feet of space. The moment the CATV cable was attached, the 6 feet of space above the attachment was rendered useless to the utility because of the clearance requirements of the State Safety Code. The CATV attachment therefore preempted a total of 6.5 feet, which was 45 percent of the total usable space of 14.5 feet. The rate under this theory would be 45 percent of $30.24, or $13.61. Although the Commission found the maximum rate to be $13.61, it settled on a rate of $12.000 as a reasonable rate.[3]

Applying this second theory of allocation to City Light's requirements, the resulting rate would be:

	Feet
For CATV attachment	1
Washington State Safety Code Requirement	4
City Light space	13
Total usable space	18
Total space for CATV (27.77% of total usable space)	5

rate=35.81×0.2777=9.95/pole/year

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[3] The California utility proposed a variant of the second allocation theory which resulted in a $12.28/pole/year rate. Thus the $12.00 rate adopted by the Commission was acceptable to the utility. (Appendix).

City Light utilized the following formula:

cost/pole/year=new pole cost÷life of pole÷number of uses

results in a cost of: cost/pole/year=$479.50[4]÷40÷2=$5.99

City Light reviewed the pole attachment rates of the utilities operating in the Puget Sound Arm. The rates charged by utilities are as follows:

Puget Sound Power & Light	$3.50
Seattle City Light	3.00
Tacoma	4.00
Snohomish P.U.D.	6.25

Rates outside the Puget Sound Area are as follows:

Pacific Gas & Electric (Calif.)	12.00

The Washington Supreme Court affirmed a Snohomish County Superior Court decision (Snohomish County No. 125611) which held that an increase in pole attachment rates from $3.60 (effective in 1966) to $6.25 (effective in 1973) was reasonable (*Snohomish P.U.D.* v. *Broadview Television*, 91 Wn. 2d 3, ——— P2d ——— (1978). The Supreme Court also held that rates established by a Public Utility District for the rental of district property not required for its own purposes, including space on its utility poles, are exempt from judicial review.

The rates as determined by the various theories are as follows:

Federal Criteria (usable square 1 foot)	$3.44
Federal Criteria (usable space 1 foot+4-foot State safety requirement)	11.90
Washington State Criteria	13.16
California Utility Commission:	
Theory I	10.08
Theory II	13.61
Adopted	12.00
City Light, per California Adopted Method	13.25
City Light (avg. 40-year pole life)	5.99
City Light (avg. 25-year pole life)	9.59
City Light (adopted)	5.00

Reasonableness of Rates

Facts:

1. The rate of $3.00 per pole per year has been the rate charged CATV systems for pole attachments since 1966.

2. The inflation has been 120% in the 13 years since the last rate adjustment.

3. There are 47,000 homes served by CATV corporations in City Light's distribution area. One CATV customer is served from each pole. The rate impact per CATV customer, resulting from a rate of $2.45 per pole per year, is $0.20 per customer per month.[5] This is a miniscule amount compared to the cost to CATV customers if the operators were required to place their wires underground or on their own pole line.

4. Cable television is a luxury and nonessential service as opposed to electric service. No user of a luxury service, such as cable TV, should expect the user of an indispensable service, such as electric service, to subsidize any portion of the cost of the luxury service. The users of cable TV should pay, through their monthly rates, a reasonable portion of the cost of owning and maintaining the City Light poles contacted by the cable TV operator in the course of supplying cable TV services to its customers.

The capital cost of underground CATV plant construction would be approximately 75 million dollars; the cost of an overhead system would be approximately ¼ to ⅓ of that cost. The CATV operators would then have a yearly operation and maintenance of approximately $30.00 per pole per year. The CATV operators would be required to acquire right-of-way easements in certain areas of the City, a benefit acquired without cost when utilizing City Light poles. In the event of underground, CATV operators would be required by Ordinance 90047 to provide additional ducts for the exclusive use of the City, and without cost, all of which would tend to increase the cost to the CATV subscriber above that he would be required to pay as a result of a $2.00/pole/year pole attachment rate increase.

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[4] Actual cost at 1979 pole bids and labor rates for standard 47' (14.5 meter) pole. City Light used an average pole life of 40 years. City Light Accounting has determined that the average pole life is 25 years. The cost per pole/year at the 25 year average pole life is $9.59 per pole.

[5] Total additional expense to CATV industry caused by rate increase is $114,970. $114,970÷47,000 subscribers (from Office of Cable Communications), adjusted for City Light service area. CATV customer expense=2.45/year or 0.20 per customer per month.

The City Light pole attachment rates have not been changed for 13 years even though the inflation during those 13 years has steadily increased at a rate of about 9% per year (120% over 13 years). This has resulted in a windfall (approximately $227,110) to the CATV and a tremendous benefit to the CATV subscribers at the expense of City Light rate payers.

Also, the CATV systems have received an additional windfall as a result of not having to pay City Light for CATV attachments on City Light's joint owned poles. This windfall during 1979 alone was in the amount of $114,970.[6]

City Light Contracts with CATV Systems

The following CATV systems have operated in the Seattle City Light service area:[7]

1. Master Television Antenna Systems, Inc. (1956).
2. Telecable, Inc. (   ).
3. Colorcable, Inc. (1966).
4. Seattle Cablevision (1967).
5. Total Telecable (1967).
6. Crystal Cablevision (1968).
7. Northwest Cablevision (1968).
8. Community Telecable (1968).
9. United Community Antenna (1968).
10. Liberty T.V. Cable, Inc. (1969).
11. Teleprompter (1971).
12. Viacom International, Inc. (1973).
13. Cablevision (1975).
14. Viacom Cablevision.

It would appear that over the years either Teleprompter Corporation or Viacom International, Inc. have acquired the ownership of each of those CATV systems. The CATV systems numbered 3, 4, 6, and 7 are now under the ownership of Teleprompter Corporation and those CATV systems numbered 1, 2, 5, 8, 9, and 13 are under the ownership of Viacom International, Inc. City Light had pole attachment agreements with each of the singly owned systems. However, City Light does not have pole attachment agreements with Viacom or Teleprompter. Seattle attempted in 1978 to secure an agreement with Teleprompter. However, Claire Feldman, Assistant Secretary and Director of Administration, rejected the offer to contract in the name of Teleprompter as requested by City Light. Paragraph 6 of the pole attachment agreement provides as follows:

> "Licensee shall not assign, transfer or otherwise dispose of any of the privileges granted under this agreement without the written consent of City Light."

All of the CATV systems (Licensees) indicated above have assigned or transferred the privileges granted to Teleprompter and Viacom. None of the CATV systems or the corporations that acquired their ownership have sought or received the written consent of City Light to affect such assignment or transfer. Therefore, it would appear, from City Light's records, that there are no existing valid pole attachment agreements between City Light and the current owners. Without a written consent to affect a transfer or assignment of privileges, the Licensees have breached the agreement and City Light is under no obligation to continue to meet any of the terms of said agreement.

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[6] Number of jointly owned poles, 39,000; Number of City Light owned poles, 8,735.

39,000 × ($5.00 − $2.50) (Joint poles with PNB, rented at unrealistically low rates)	$97, 500
8,735 × ($5.00 − $3.00 (100% City Light poles)	17, 470
Total	114, 970

[7] Per available City Light records.

On August 27, 1979, all CATV system operators were notified that the City Light pole attachment rates would be increased from $3.00 per pole per year to $5.00 per pole annually. Teleprompter Corporation, in its comments submitted in response to City Light's published notice of rule making, appears to be under the impression that it is operating under a valid pole attachment agreement and asserts that those agreements permit increases and decreases of the fee by City Light upon "not less than six (6) months' written notice to the Licensee, prior to the end of the then calendar year." Since Teleprompter or Viacom did not receive written consent to transfer the Licensee's privileges under the pole attachment agreements, they have no rights under those agreements and City Light is under no obligation to provide six (6) months' notice.

NATIONAL PUBLIC POWER INSTITUTE,
Wenatchee, Wash., January 18, 1982.

Senator SLADE GORTON,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR GORTON: We wish the following statement to be included in the record of the hearings you chaired in Seattle on January 18, 1982, on the topic of cable television. Had we heard about the hearing in advance of the agenda's being filled, we would have requested the opportunity to submit the statement during the hearings.

Public power has been a shining light in the Pacific Northwest.

Historically, municipally owned systems offered rates glaringly lower than those offered by private utility companies.

Farmers, working people and businessmen and women in communities across the state campaigned for and won the right to set up Public Utility Districts in the 1930s and 1940s. Their goal was direct control over this public service and over the policies that would govern it.

Municipal ownership and these PUDs gave each community an important power—the power to decide where it would get its energy from; what that energy would be used for; and how much people would pay for it. Local public ownership assumes that people know best what is best for them. It assumes that the most efficient and satisfactory way to provide a service is to provide it directly. Local public ownership assumes that the only way to ensure that local needs are met is to make sure that the service is controlled locally.

Public power has been a success in this state, and across the country. It has meant that communities had a productive resource enabling them to relate jobs, revenues and development to local needs. It has functioned in Washington for 40 years and more to provide high quality service at the lowest rates in the nation without elaborate bureaucracy, state regulation or federal intervention.

Local public ownership should provide a model for us in these times when so many political leaders identify regulation and its failure as the major obstacle to the smooth operation of our economic system.

People in this state take for granted the fact that they have direct control over this essential public service. In Grant or Snohomish County, when electric rates are set, people don't need to petition for "intervention." They can go to the Commission meeting and let the Commissioners know directly how rate changes will affect them. If people in Seattle want City Light to establish a special rate for senior citizens, they don't need to embark on some lengthy procedure and submit a request to Olympia for ultimate denial on the basis of politics, or some regulation which was written to cover the broadest conditions.

As conditions in the economic and energy picture change, each public power community has the ability to develop its own response—a response that reflect its needs, rather than sacrificing them to some policy sent down from on high. The policies that originate on the desks of government legislators or bureaucrats at best reflect the needs of the most influential economic group, and at worst, the abstract view of some expert on the "public interest."

But taking local control for granted is a mistake. In our state, this led to the WPPSS fiasco. Had communities scrutinized the actions of their WPPSS representatives from the beginning, the Supply System and the public wouldn't have gone off in different directions.

Taking local control for granted can also lead to a lack of vigilance against state and federal encroachments on local autonomy. The Northwest Power Act has already begun to involve PUDs in costly and time-consuming procedures which have little or no value, while subjecting local rate determination to the authority of a federal agency. The same criticism applies to proposals which would give the Utilities and Transportation Commission jurisdiction over locally controlled systems.

Such proposals embody the discredited liberal notion that the government—not the local community—knows what is best for people.

Here in Washington, local control and public ownership have given our entire region an energy foundation that has been the envy of the rest of the United States. The best thing that could happen during the 1980s is realization of increased public participation and enhancement of local control. The worst thing that could happen is the cynical limitation of local control by the imposition of governmental regulation.

Sincerely yours,

BETHANY WEIDNER,
Research Director.

SKAGIT COUNTY,
PUBLIC UTILITY DISTRICT,
Mount Vernon, Wash., January 22, 1982.

MR. WARD WHITE,
Senate Commerce Committee, Subcommittee on Communications,
Russell Senate Office Building, Washington, D.C.

DEAR MR. WHITE: These remarks are for the hearing record on Senate Bill 898.

It is my belief that legislation before Congress should be limited to those items that are of national significance and importance. The establishment of pole attachment fees in behalf of the cable T.V. industry is certainly of no national significance; therefore, it should not be part of a bill before the U.S. Senate.

Such issues should be settled on a local basis where local costs and local conditions prevail.

There is no fee that can be set on a national basis that will be fair and equitable in all fifty states.

Yours truly,

JACK B. DOTY,
Manager.

KING BROADCASTING COMPANY,
Seattle Wash., January 22, 1982.

Senator SLADE GORTON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR GORTON: I am writing you regarding the cable TV hearings you held in Seattle concerning provisions previously deleted from SB898.

I hereby urge you to give control of P.U.D. pole rates to the FCC.

In Washington state the P.U.D.'s unilaterally raise pole rates without concern for the cable companies or the public welfare. Many cable companies here serve sparsely populated areas where people have *no tv* without cable. The cost of pole fees is a vital considerttion to companies considering extensions in such rural areas.

Pole fees are *found money* to the P.U.D.s. They have little/no maintenance costs for the cable plant and their depreciated cost basis of their pole plant is decreasing every year.

Despite the foregoing and the FCC's determination that fair and equitable pole contact fees are between $1.50 and $2.50 per year, the rentals have been raised to over $7.00 and higher with further increases threatened. These raises are mandated without financial justification or discussion with the operators.

Thank you for your consideration.

EDWARD H. HEWSON, Jr.,
Vice President.

Enclosure.

SAMPLE

PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY,
Aberdeen, Wash., December 7, 1981.

COAST COMMUNICATIONS CO., INC.,
Ocean Shores, Wash.

REVISED CONTACT RENTAL SCHEDULE

GENTLEMEN: The pole contact agreement currently in effect between Coast Communications Co. and Public Utility District No. 1 of Grays Harbor County was entered into March 14, 1977.

A review of costs reveals a need to adjust the schedule of contact rentals to conform to present day costs. The new contact rentals are as follows:

	Per Pole Per Year
Television contact on District owned poles	$7.37
Television contacts on poles jointly owned with Pacific Northwest Bell Telephone Company	3.69

The new rates for your contacts on P.U.D. poles will be effective for billings on and after July 1, 1982.

These costs are determined by multiplying the percentage of the total usable space occupied by your pole attachment (one foot) by the sum of the operating expenses and actual capital costs of the District attributable to the entire pole. The computations are attached. We regret that the increased costs of labor and material make this adjustment necessary.

We propose to revise and update our pole rental agreement in accordance with the enclosed draft. Two signed copies should be returned to our office for execution by District officers, after which one will be returned for your records.

Yours very truly,

DONALD L. SWINHART,
Acting General Manager.

PUBLIC UTILITY DISTRICT NO. 1 OF FERRY COUNTY,
Republic, Wash., January 25, 1982.

Senator SLADE GORTON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR GORTON: The issue of Federal Legislation to control cable pole attachments appears to be raising its head again. I would like to re-affirm our Utility's position in that we feel that this is a usurping of local authority. I cannot address this issue as it pertains to the larger metropolitan areas, however, I do know, from my own personal experience, that in the rural areas, such as here in Republic, Washington, we would not have the advantage of cable television had it not been for the utility granting pole attachments at what, in reality, was less than our actual costs. This, because of our commitment to the area as a whole.

In an era when decontrol by Federal Agencies is a stated goal of our current administration, I cannot help but find this issue of pole attachments lying outside the perimeters of President Reagan's Federal policy.

Sincerely yours,

KENNETH R. COYLE,
Manager.

PUBLIC UTILITY DISTRICT NO. 1 OF WAHKIAKUM COUNTY,
Cathlamet, Wash., January 27, 1982.

Senator SLADE GORTON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR GORTON: Pole attachment fees for cable TV and other utilities should be locally regulated on a cost-of-service basis, according to local conditions. Our District satisfactorily negotiates these fees. We do not seek to make money from our pole attachment fees, but neither do we ask our electric ratepayers to subsidize a private, for-profit cable TV business.

The existence of disputed rates in a few areas—with the Public Utility District rates being upheld in court challenge—is not a good reason for the federal government to intrude in an arena of local control.

Sincerely yours,

David Lee Myers,
Commissioner.

Snohomish County Public Utility District No. 1,
Everett, Wash., January 29, 1982.

District Position Statement

Hon. **Slade Gorton,**
U.S. Senate, Russell Senate Office Bldg.,
Washington, D.C.

Dear Senator Gorton: This writing is to respond to certain statements made by representatives of the cable TV industry at the hearing conducted in Seattle on January 18. In particular we will comment on the testimony of Viacom's representative. I am sure that you recall that we wrote to you last year during the Senate's consideration of S. 898.

Although Viacom's testimony was generally concerned with the role of government in the development of the cable industry and about franchising, we are particularly concerned with the testimony about pole attachments.

Rents set by public utilities in Washington State are required by law to be market value based—that is cost-based. At present, public utility district rental rates are, on average, 61 percent less than necessary to recover costs. The average rental rate is now $4.26, while a recent study indicates that cost based rates would average $7.29.

Even though average rates are now well below cost, Viacom argues that rental rates of public systems should be less. At a time when borrowing costs for government have soared, Viacom would have you believe that the operating costs of public systems are less than private utilities. The real difference between the systems is the provision for profit by private utilities.

Viacom has even testified that increase in pole attachment fees is somehow linked to the recent difficulties of the Washington Public Power Supply System. It should be obvious that the cost of owning and maintaining poles has no relationship whatsoever to nuclear programs. Viacom's arguement is nothing less than sensationalism.

While Viacom claims that public utility districts are monoplies in their service area, the same is true for CATV systems. Utility monopolies, and cable monopolies, are based on the sound premises of efficiency of delivery. Unlike cable systems, however, public power systems are answerable directly to the ratepayers through election of the systems' governing bodies.

Public power rates are set by elected representatives of the people. Local authorities should be allowed to determine what is desired at the local level. Surely local authorities can more accurately determine how to address local needs and circumstances than can be done by some distant, appointive regulator. Ultimately this is an issue of local control. At a time when the federal government is deregulating many sectors of the private economy, the CATV proposal for federal regulation runs counter the philosophy of "cooperative federalism".

Please let us know if we can provide you with further information on this important issue.

Very truly yours,

Stephen Lamphear,
Legislative Assistant.

Nation Wide Cablevision,
Bellingham, Wash., Februray 2, 1982.

Hon. **Robert Packwood,**
Chairman, U.S. Senate Commerce Committee,
Old Senate Office Building,
Washington, D.C.

Dear Senator Packwood: I was fortunate enough to attend the S. 898 Field Hearing on January 18, 1982 in Seattle. It was refreshing to find the familiarity and insight that both you and Senator Gorton possess with respect to this complex issue; however, as System Manager of Nation Wide Cablevision, Inc. in Bellingham, Washington, I feel it appropriate to address several important considerations concerning both this system and the industry. Indeed, the apparent credibility afforded comments directed at our system would seem to dictate the need for my response.

The Bellingham system is in fact one of the oldest cable systems in the Nation. Its age exceeds the 30-year franchise provided it in 1953. The outstanding technical and service level provided by the system is most assuredly not predicated on requirements of an antiquated document, but rather on sound business management found primarily only in the private sector. Further, it is the product of long range planning—a concept which unfortunately, often may be minimized by restrictive and /or poorly-administered franchise agreements.

If, as claimed at the hearing, Bellingham is on the "cutting edge", it has been so for several years. The refranchise issue was raised by Nation Wide Cablevision in 1978 with a common sense approach which would have benefitted all involved (e.g., risk reduction, continued construction and upgrade). It is interesting to note that our cable system initiated the key points stressed by Harold Horn of CTIC (Kagan Report, 1-15-81)—an organization consulting many municipalities. Briefly, those points are:

(1) Seek refranchise 2 to 3 years prior to franchise expiration.

(2) Renegotiate in good faith with existing franchisee when the existing service is satisfactory.

(3) When a rebuild or an upgrade is projected, work with the franchisee for a refranchise and mutual benefit.

Overall, then failure to apply these considerations has resulted in delays in plant construction and a capacity upgrade from 21 to 36 channels as well as a restricted ability for long-range planning and competition for the future entertainment dollar. Without question, there has been a disservice to cable subscribers and constituents within our service area.

Nation Wide Cablevision anticipates future operation in Bellingham. Then, as now, a non-exclusive franchise enables competition from other cable operators. It is not unrealistic to anticipate that, given a favorable political climate, operators would seek to fulfill a demand where others could or would not do so. This philosophy has already been bluntly communicated by some MSO representatives. Nation Wide Cablevision has been cognizant of this situation.

It has been contended that the failure to generate responses to the Bellingham RFP was due to implicit "signals" from T.C.I. The factual reasons, I purport, are quite evident. Among these are the timeframe remaining on the current franchise, the restrictive nature of the RFP and its applicability to the Bellingham community, the quality and level of service of the current operation and, as importantly, the previous treatment afforded the current operation by the governing municipality. Prospective bidders, for example, would have to project a business risk environment where, until very recently, regulated residential rates remained unchanged for over 13 years, bulk rates unchanged since 1953, and a non-pass-through B&O assessment implemented in the interim:

It is realized, of course, that a municipality has the obligation to exercise its police powers over a business utilizing public right-of-ways. One might wonder, however, why a non-utility with a fixed rate must absorb B&O assessments and franchise fees while utilities with guaranteed rates do not. If, as in Bellingham, off-air reception is good and cable is deemed a luxury, one might feel a 99+% penetration and a commensurate 80% saturation is an excellent indicator of cable service quality and further justification forr ate deregulation. Contrary to the position advocated at the hearing, a high penetration rate is not totally indicative of a captive market. Rather, here it is indicative of a private business operation efficiently providing a valuable service in a highly capital-intensive and risk-intensive industry. Without question, a 30-year operational timeframe would seem adequate to gauge the validity of reduced regulation based on system performance. Unfortunately, applicable here in Bellingham (and possibly elsewhere), a fervent desire for increased regulation and placement of a municipality in "the strongest possible position" has currently resulted in a disservice to virtually all concerned.

It is blantantly obvious that the CATV industry continues to become more complex. Consequently it is understandable that some municipalities might, conceding the large importance placed on Cable T.V., assume an "advisary" stance regarding regulations where there has been a dearth of "homework" or a failure to avail itself to competent consultation. When increased regulation is premised on lack of knowledge and/or on expedience, however, it is too often counter to the best interests of the constituents for whom the regulations were developed. Education and information, rather than increased regulation, would seem a more common sense approach.

In conclusion, while it is always easy to speak in terms of "glorious generalities", it would seem more appropriate to focus on increased awareness and familiarity with CATV rather than increased regulation of an industry viewed as extremely important but often preceived as too complex to adequately examine. Quality consultation is available to those municipalities who seek to remain well-informed. If franchise fees are founded on franchise maintenance and control—and that contention is extremely suspect—franchise fee funding of quality consultation might derive a more efficient and cost-effective procedure for franchise maintenance and reduce a preceived need for increasing municipal regulation.

Yours truly,

KEITH TRAFTON,
System Manager.

WASHINGTON STATE CABLE TELEVISION ASSOCIATION,
Olympia, Wash., February 10, 1982.

SENATOR ROBERT PACKWOOD,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR: I was present at the hearing held in Seattle recently regarding cable television. I am the Executive Secretary of the Washington State Cable Television Association. At that hearing, Mr. Pat Brock, the City Attorney for Bellingham, mentioned the municipal ownership situation in St. Paul, Minnesota. I think it might be appropriate to add to the record the fact that the reason St. Paul opted from municipal ownership is that the Council could not agree on a franchise after going through the whole bidding process, including consultant's reports, etc. This Council is clearly negligent in it's ability to exercise it's public duty in choosing the best qualified applicant based on merits.

The Council's inability to make an objective decision seems to be the major reason why they opted for municipal ownership not because they made a rational decision that municipal ownership was better than private ownership. I think this needed to be stated and perhaps was not at the hearing.

Thank you, for allowing me to submit this in the record.

Yours truly,

JEROME L. BUZZARD,
Executive Secretary.

STATEMENT OF TOM SHAFER, MAYOR, PORTALES, N. MEX.

In 1961, the Portales City Council executed an agreement, which would initiate cable television in the area. Because of a lack of regulatory powers in the agreement, Portales residents have been subject to substandard cable television service, in comparison to other communities. The existing agreement will expire in 1986, and I sincerely hope the City will be in the position to negotiate a franchise agreement which will guarantee the City the regulatory powers necessary to insure that Portales citizens will be provided with quality cable television at a fair rate.

Some proponents of cable television deregulation feel that regulation of the industry is not necessary, for people do not have to have cable television like they need some utilities. I submit that in our highly complex and mobile society, that communications is one of the more important items that makes our society operable. I do not believe that many could offer a valid argument that the telephone is not a luxury. The telephone is an integral part of our communication system and I feel that cable television with its news, educational programs, documentaries, and other programs, is also an integral part of our communication system.

Without cable television, reception for two major network channels in Portales is marginal. Therefore, if Portales residents are to be kept abreast of the full spectrum of world events, they must have access to a good cable television system.

In October, 1981, a merger between Teleprompter Cable TV, which serves Portales, and Westinghouse was completed. On December 16, 1981, the Portales City Council was informed that effective January 1, 1982, the rates for basic cable television would be increased by 10%. It makes you wonder how a large company can determine within 30 days that a rate increase is needed. Because of a lack of regulatory powers granted to the City of Portales in the agreement, the City of Portales could not require Teleprompter Cable TV to submit any documentation which would justify the rate increase.

Many problems that Portalesons have faced with cable television have been because of a lack of regulation on the local level. Once again I will be the first to admit that said problems were generated by the City, who failed to negotiate an effective agreement. It will take Portales 25 years before it can correct the substandard service that was caused by a lack of effective regulations. I have strong feelings that local governments with direction from the Federal government should continue to regulate the cable television industry in order to insure that the people we serve receive quality service at a fair rate.

STATEMENT OF JAMES K. HALL

My name is James Hall. I am a member of a Citizens Committee on Cable Television in Albuquerque. We have been appointed by the mayor and the City Council to research and review the state of the art in cable television, and the stipulations of current franchise agreements. I also serve as a Director on the Board of the local media access center and on the Board of Directors for the National Federation of Local Cable Programmers (NFLCP).

My interest in submitting written testimony to the Senate Committee on Commerce, Science and Transportation Field Hearing held in Albuquerque on February 16, 1982 is rooted in the fact that citizens who are not directly affiliated with government or the cable industry will be directly affected by any legislation enacted and need an opportunity for input into the legislative process. Therefore, I am requesting that this testimony be included in the Field Hearing Record.

As Senator Schmitt and member of this committee are well aware, the technological changes occurring at an unprecedented rapid rate will have profound and irreversible effects on the daily lives of all citizens. Inter-active television, home security and a vast amount of information at our fingertips are realities that loom on the immediate telecommunications horizon. Access to information is predicted by some to be the key to the future. Can this country afford informational "haves" and "have-nots" is a question to be grappled with on both a local and a national level. Deregulating cable television services calls for a broad-based discussion and dialogue.

To insure that citizens will be served and not ruled by technology in the future, it is imperative that states and municipalities retain the right of regulating cable television services and rates on a local level. It is my firm opinion that the freedom to determine what form of ownership will best serve a particular community should be left in the hands of local government. As other witnesses have testified, the current trend is towards cable system ownership in the hands of a few. There are both advantages and disadvantages to any form of ownership. The choice of an MSO, a local cooperative or operation by the municipality itself can best best be determined by the needs and limitations of a local community.

I am also in agreement with testimony of other witnesses who have stated that after a franchise is awarded, cable television operates as a de facto monopoly in the vast majority of cases. This is true even if the terms are non-exclusive. Because public rights-of-way are used by the cable operator, local regulation is necessary.

Other witnesses have briefly mentioned the importance of community services provided by cable television. I would like to add to those statements. I am speaking from both the perspective of consumer and as a general contractor who is a member of the local business community.

The technology of cable television is able to provide a large number of entertainment and information channels. As a result of an original FCC mandate, a small number of these available channels were set aside for government, educational, public and leased access. When the Supreme Court ruled that the FCC could no longer make that requirement, the provision of these channels became standard local requirements during the franchise process. From the vantage point of my position on both national and local Boards of Directors, the use of the cable television medium as a cost-effective communications resource in communities all across the country. For a fraction of the amount necessary to utilize full power broadcast television, local government and educational institutions, local business and the general public have access to the medium of television.

Only if local government can continue to require these Access channels will the First Amendment Rights of all citizens be assured and protected.

The issues being considered by this committee are critical and will affect citizens for years to come. I urge you to solicit a diverse range of perspectives. The concerns of cable operators and elected officials are being heard and considered. In addition to these participants there are consumer and citizen groups who have done extensive research in the area of telecommunications. The expertise and experience of these organizations would provide additional information for the Committee.

Thank you for your time. I appreciate the opportunity to express my experiences and perspective.

Mickelson Media Inc.,
Cable Television Group,
Albuquerque, N. Mex., February 16, 1982.

Senator Harrison Schmitt,
Russell Senate Office Building,
Washington, D.C.

Hon. Senator Schmitt: Recently you asked me why rural electric cooperatives should be regulated for pole attachments.

Enclosed, I believe, is the best explanation that there is.

Article 2 arbitrarily requests six feet clearance below the lowest attachment. This I believe was made in consideration for the phone company. Since normally the phone company attaches below the cable TV, this subparagraph would essentially require changing out most poles, at our expense, to meet this requirement. The local manager feels this point may be negotiated.

Article 8 is a pole rental schedule starting at $4.50 per annum and escalating to $14.00. This, we are told, is not negotiable and the premise for these rates are based upon the coop's desire to purchase two new bucket trucks.

Cable TV companies serving rural areas are for the most part very small companies desiring and maintaining a very good working rapport with the coops. They don't have the resources to erect separate pole lines or to bury their complete plant. For the most part, residents of these small communities don't have disposable incomes that could pay for the consequential, additional costs. Most communities would not allow a separate pole line which would be more affordable than the proposed rental and since all we are asking for is one foot of pole space, I truly believe it should be in the best interest of the resident if the FCC could intercede in their behalf.

I would be most happy to discuss this with you at your convenience.

Very truly yours,

Allen B. Summers,
Vice President of Southern Operations,
Mickelson Media Inc.

AGREEMENT FOR JOINT USE OF ELECTRIC SYSTEM POLES

PREAMBLE

Mora-San Miguel Electric Cooperative, Inc., a corporation organized under the laws of the State of New Mexico, (hereinafter called the "Owner"), and Mickelson Media Inc., a corporation organized under the laws of the State of New Mexico (hereinafter called the "Licensee"), desiring to cooperate in the joint use of poles and right-of-way clearing incident thereto, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows:

ARTICLE I—SCOPE OF AGREEMENT

(a) This Agreement shall be in effect in the areas in which both of the parties render service in the State(s) of New Mexico, and shall cover all poles of the Owner now existing or hereafter erected when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.

(b) The Owner reserves the right to exclude any of its facilities from joint use.

ARTICLE II—SPECIFICATIONS

(a) The joint use of the poles covered by this Agreement shall at all times be in conformity with accepted modern methods, such as those set forth in Edison Electric Institute Publication No. M 12, and shall at all times conform to the requirements of the National Electrical Safety Code, Fifth Edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

(b) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the stom loadings of the National Electrical Safety Code assumed for the area in which they are located, without exceeding fifty (50%) percent of their ultimate stress. In the case of existing pole lines, the strength of poles shall be assumed to be the same as when new.

The point of attachment for the licensee shall be six feet below the lowest attachment of the owner for primary distribution poles and four feet for service drop lift poles.

ARTICLE III—ESTABLISHING JOINT USE OF POLES

(a) Before the Licensee shall make use of any of the poles of the Owner under this Agreement, it shall request permission therefor in writing on the application form attached hereto and identified as Appendix A, and shall comply with the procedure set forth therein and in this Article III.

(b) If, in the judgment of the Owner, joint use under the circumstances is undesirable, the Owner shall have the right to reject the application. In any event, within 20 days after the receipt of such application the Owner shall notify the Licensee in writing whether the application is approved or rejected.

(c) After receipt of notice from the Owner that the application has been approved, the Licensee shall furnish the Owner detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Owner to be used jointly, the number and character of the circuits to be placed on such poles, any rearrangement of the Owner's fixtures and equipment necessary for joint use, any relocations or replacements of existing poles, and any additional poles that may be required. The Owner shall, on the basis of such detailed construction plans and drawings, submit to the Licensee within 20 days a cost estimate (including overhead and less salvage value of materials) for all changes that may be required in each such pole line, including an estimated completion date for such changes. Upon written notice by the Licensee to the Owner that the cost estimate is approved, the Owner shall immediately proceed with the necessary changes in the pole line covered by the cost estimate and shall diligently expedite the completion thereof within the time specified in the estimate. Nothing in the foregoing shall preclude the parties hereto from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes. Upon completion of all changes, the Licensee shall have the right hereunder to jointly use the poles and to make attachments in accordance with the terms of the application and of this Agreement. The Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of the Owner, and place guys and anchors to sustain any unbalanced loads caused by its attachments.

(d) Upon completion of all changes in each pole line to be used jointly, the Licensee shall pay to the Owner the actual cost (including overhead and less salvage value of materials) of making such changes but in no event, however, shall the Licensee be required to pay for such changes more than 120% of the cost estimate provided for in Section (c) of this Article. An itemized statement of the actual cost of all such changes shall be submitted by the Owner to the Licensee, in form mutually agreed upon.

(e) Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of joint use hereunder shall be performed by the parties as may be mutually agreed upon. The cost of any such right-of-way reclearing and trimming shall be borne by the parties as follows: for a right-of-way of up to twenty (20) feet in width, 50% by the Licensee and 50% by the Owner, for a right-of-way in excess of twenty (20) feet the Licensee shall pay the same proportion of the cost as ten (10) feet bears to the width of the right-of-way and the Owner shall pay the balance of the cost.

(f) All poles jointly used under this Agreement shall remain the property of the Owner, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to the Ownership of any of said poles.

(g) In order that the parties may effectively coordinate their efforts with respect to joint use of any pole lines to be constructed in the future, the parties shall, insofar as practicable, make known to each other its plans for future construction. If joint use is contemplated with respect to such future construction, the parties shall cooperate in planning such construction so that joint use may be accomplished in a manner mutually satisfactory to the parties within the objectives of this Agreement.

ARTICLE IV—EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

While the Owner will cooperate as far as may be practicable in obtaining rights-of-way for joint use of poles, the Owner does not warrant or assure to the Licensee any right-of-way privileges or easements, and if the Licensee shall at any time be prevented from placing or maintaining its attachments on the Owner's poles, no liability on account thereof shall attach to the Owner. Each party shall be responsible for obtaining its own easements and rights-of-way.

ARTICLE V—MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY

(a) The Owner shall, at its own expense, maintain the jointly used poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article II and shall replace, reinforce or repair such of these poles as become defective.

(b) When replacing a jointly used pole carrying terminals of aerial cable or underground connections the new pole shall be set in the same hole which the replaced pole occupied unless special conditions make it necessary or mutually desirable to set it in a different location.

(c) Whenever right-of-way considerations or public regulations make relocation of a pole or poles, necessary such relocations shall be made by the Owner at its own expense, except that each party shall bear the cost of transferring its own attachments.

(d) Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall, before making such replacement or relocation, give 20 days notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall, at the time so specified, transfer its attachments to the new or relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall pay the Owner the cost thereof.

(e) Except as otherwise provided in Section (f) of this Article, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Article II and shall keep them in safe condition and in thorough repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed by the parties as may be mutually agreed upon and the cost thereof shall be borne by the parties as provided in Article III (e).

(f) Any existing joint use construction of the parties which does not conform to the specifications mentioned in Article II shall be brought into conformity therewith as soon as practicable.

When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Sections (a) and (e) of this Article.

ARTICLE VI—PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

(a) When either party desires to change the character of its circuits, such party shall give 20 days notice to the other party of such contemplated change in the character of its circuits and in the event that the party agrees in writing to joint use with such changed circuits then, subject to the procedure hereinafter provided for in Sections (c) and (d) of this Article, the joint use of poles shall be continued with such changes in construction as may be required to meet the terms of the specifications mentioned in Article II for the character of circuits involved.

(b) In the event, however, that the other party fails within 20 days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed circuits, then both parties shall cooperate in accordance with the following plan:

1. The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

2. The net cost involved in re-establishing such circuits in the new location as are necessary to furnish the same service facilities that exist in the joint use at the time such change was decided upon, shall be equitably apportioned between the parties hereto.

(c) If the change in character of circuits requires pole replacements for the sole benefit of the Owner, the pole replacements shall be made by and at the expense of the Owner. Before making such replacements the Owner shall give 20 days notice thereof in writing to the Licensee, specifying in such notice the time of such proposed replacements, and the Licensee shall, at the time so specified, transfer its attachments to the replaced pole or poles. Should the Licensee fail to transfer its attachments to the replaced pole or poles at the time specified for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall pay the Owner the cost thereof.

(d) If the change in character of circuits requires pole replacements for the sole benefit of the Licensee, the Licensee shall, with respect to pole replacements necessitated by a change in the character of its circuits, follow the procedure provided for in Article III—Establishing Joint Use of Poles.

ARTICLE VII—ABANDONMENT OF JOINTLY USED POLES

(a) If the Owner desires at any time to abandon any jointly used poles, it shall give the Licensee notice in writing to that effect at least 60 days prior to the date on which it intends to abandon such pole. If at the expiration of said period the Owner shall have no attachments on such pole but the Licensee shall not have removed all of the attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the Owner from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring, because of, or arising out of, the presence or condition of such pole or of any attachments thereon; and shall pay the Owner for such pole an amount as may be mutually agreeable to the parties, but in no case shall the payment exceed the net salvage value of the pole to the Owner. The Owner shall further evidence transfer to the Licensee of title to the pole by means of a bill of sale.

(b) The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon. The Licensee shall in such case pay to the Owner the full rental for said pole for the then current year.

ARTICLE VIII—RENTALS

(a) On or about November 30 of each year the parties acting in cooperation shall tabulate the total of the number of poles in joint use as of the preceding day and the number of poles on which the Licensee removed all of its attachments during the twelve preceding months, which tabulation shall indicate the number of poles on which rentals are to be paid.

(b) The rental per pole due from the Licensee to the Owner shall be:

For 1982 thru 1986 (per annum)	$4.50
For 1987 thru 1991 (per annum)	8.00
For 1992 thru 1996 (per annum)	14.00

which shall be paid by the Licensee to the Owner for each jointly used pole as shown by the annual tabulation of joint poles provided herein.

ARTICLE IX—RIGHTS OF OTHER PARTIES

(a) If the Owner, prior to the execution of this Agreement, has conferred, or hereafter confers, upon others not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and the Owner shall have the right, by contract or otherwise, to continue or extend such existing rights or privileges, it being expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party shall be treated as attachments belonging to the Owner, and the rights obligations, and liabilities hereunder of the Owner in respect to such attachments shall be the same as if it were the actual owner thereof.

(b) Where municipal regulations require the Owner to allow the use of its poles for street lighting and fire alarm, police, or other like signal systems, such use shall be permitted under the terms of this Article, provided attachments of such parties are placed and maintained in accordance with the specifications mentioned in Article II.

ARTICLE X—ASSIGNMENT OF RIGHTS

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof, provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be.

ARTICLE XI—WAIVER OF TERMS OR CONDITIONS

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

ARTICLE XII—PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint poles shall be paid by the owner thereof, but any tax, fee, or charge levied on the Owner's poles solely because of their use by the Licensee shall be paid by the Licensee.

ARTICLE XIII—INTEREST AND PAYMENTS

All amounts to be paid by one party to the other under this Agreement shall be due and payable within 30 days after an itemized statement shall have been presented to the party required to make such payment. Any payment not made within 30 days from the due date shall thereafter bear interest at the rate of 12 percent per annum until paid.

ARTICLE XIV—SERVICE OF NOTICES

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Owner at its office at Mora-San Miguel Electric Cooperative, Inc., P.O. Box 248, Mora, New Mexico 87732, or to the Licensee at its office at 2530 Hot Springs Blvd., Las Vegas, N. Mex. as the case may be, or to such other address as either party may from time to time designate in writing for that purpose.

ARTICLE XV—TERM OF AGREEMENT

This Agreement shall remain in effect until terminated at the end of 15 years from the date hereof or thereafter upon the giving of written notice to the other party not less than one year prior to the date of termination.

ARTICLE XVI—EXISTING CONTRACTS

From and after the date of this Agreement, future granting of joint use between the parties shall be governed by and shall be subject to the terms and conditions of this Agreement.

Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE XVII—APPROVAL OF ADMINISTRATOR

This Agreement, and any amendment thereof, shall be effective subject to the condition that, during any period in which the Owner or the Licensee is a borrower from the Rural Electrification Administration, the Agreement and any amendment thereof shall have the approval in writing of the Administrator of the Rural Electrification Administration.

In witness whereof, the parties hereto, have caused these presents to be executed in quadruplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the —— day of ————, 19—.

MORA-SAN MIGUEL ELECTRIC COOP., INC.,
MICKELSON MEDIA INC.

To ______________________ ______________________
Name of Electric System — Date

______________________ ______________________
Address — Request Number

This is to request permission for this Company to use jointly certain of your poles under the terms and conditions of our Agreement for Joint Use of Electric System Poles, REA Form 777, dated ______________________.

The poles, including the number and character of circuits to be placed thereon, for which this permission is requested are those included in the pole lines indicated on the attached map, which also bears the above date and Request Number.

Our present plan is to start this work about ____________, 19____, and complete the work about ____________, 19____.

If permission to use these poles is given by you, this Company will prepare and furnish to you, after engineering is complete, detailed construction plans and drawings, together with necessary maps, to indicate specifically your poles that we wish to use jointly, the number and character of the circuits to be placed on such poles, and any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Article III of the Agreement.

If the joint use proposed is agreeable, please signify your approval of this request in the space provided and return the second copy to us.

______________________ ______________________
Name of Company — Signature of Company Representative

______________________ ______________________
Address — Title

To ______________________ ______________________
Name of Company — Date

____
Address

This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, and under the conditions outlined in your request.

______________________ ______________________
Title of Electric System Representative — Signature of Electric System Representative

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C-A CABLEVISION,
Carlsbad, N. Mex., February 23, 1982.

Hon. HARRISON SCHMITT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCHMITT: As a matter of record, we here at C-A Cablevision would like to make the following statements, concerning Cable TV:

(a) The purpose of having Cable TV is defeated when cable services are regulated by "must carry", blackout for protection of local stations, etc. Viewers should have the privilege of choosing any channel they wish to see at any time.

(b) Subscriber rates should be handled at the city and system level. Self regulation of course is best, as any cable system can price itself out of business.

(c) The Federal Government should intervene on abhorrent Franchise Fees paid and limit this to not more than the 4%.

(d) I would like to see the Federal Pole Attachment Law cover all utilities involved.

(e) We feel municipalities should not be allowed to operate or own a Cable TV System.

I will be unable to attend the hearing.

Sincerely,

WELDON LAIR,
Manager.

ALBUQUERQUE PUBLIC SCHOOLS,
Albuquerque, N. Mex., February 25, 1982.

DEAR SENATOR SCHMITT, AND COMMITTEE: I am submitting a statement, in regards to, possible new regulation in broadband, and cable television. I understand that this will be reviewed by your committee. I observed your committee meeting, held in Albuquerque, and I can see the giant problem your committee has to face. I would like the following statement to show how we use cable television at Valley High School, and how we obtained the cable service. I would also like to give my views on all broadband television, in the United States, and how it should be regulated.

At Valley High School, we have Albuquerque Cable Television service to our Media Center. I am the Media Specialist, and it is my job to operate this feed for teachers and staff. From the Media Center, the signal can be sent to our 90 seat Lecture Hall, or to other areas of the Media Center. We use the cable system almost every school day, and the C-Span-Close-Up programs are a great asset to the program at Valley High School. We also use the other services provided by A.C.T.V., Cable News Network, Spanish Int. Network, and most of the other services. Valley High School also produces its' own programs for cablecasting over the Community Cable Channel. Valley High School has produced over 16 hours of programming over the Community Cable Channel, this school year, and we intend to program about 10 more hours before the school year is over. We hope that by next year I can program over 40 hours over the Community Cable Channel, and the University of New Mexico Educational Channel. This two way use of cable T.V. is made possible by the cable company providing access to the cable system by law.

We obtained cable television because the City of Albuquerque, got together with the Albuquerque Public School system, and put into the cable contract agreement with ACTV, that the schools would get free hook-up and service, and be able to use all the services offered by ACTV. This opened the door for me to have cable television at Valley High School. Without this contract, I do not believe that ACTV would have given Valley High School free service. I also believe that this contract was the chief moving force, that helped me obtain cable television for Valley High.

I would like to list for you some of my thoughts on the regulation of cable television, and broadband television. First I would believe that the cities have the right to regulate the cable television companies, and they should be able to negotiate contracts with these companies, without federal rules coming in to play. I think the city has a right to demand certain services, and certain rules, that govern the operation of the cable company within the city limits. The main reason being, the use of city right-of-way. The cities should demand free service for schools, public access, city channels, and basic rate fees which are reasonable. As far as the operation of the cable company itself, I think they should be allowed to program anything that is offered over the broadband spectrum, within their limits as a system. I think it makes for good television competion in the viewing areas. The public pays for the service, and the public expects the service to be full of different programs, that is what they pay for. I believe that this aspect of cable T.V. should not be regulated.

In regards to broadband regulation, I believe it will regulate itself somewhat, in the next few years. The industry will begin to scramble their signals, and the public will have to pay for equipment to de-scramble. Current over the air broadcast television is regulated too much already, and to regulate broadband, could cause the television industry to become self-centered, and reluctant to try new ideas.

In conclusion I would like to list the ideas and thoughts, I have presented in my statement.

1. Valley High School uses cable television as a learn-tool, and to show the public the programs at Valley.
2. Valley obtained cable television because of a stipultation in the contract agreement with the city which stated, that all schools would be wired free of charge, and service to schools would also be free.
3. The city should be the only body that regulates cable television, and that public access to the system should be in the contract.
4. Cable television companies should be allowed to program as many programs as there are, and that they can handle.
5. Broadband signals should be self regulated, and the industry will soon scramble their signals.

I hope this gives you an idea of how the education area uses cable television. I hope that if your committee needs any further help, in this regard, they can write me, and I will be more than happy to help, in any way I can.

Yours truly,

GREGORY E. PALMER,
Media Specialist, Valley High School.

Attachment.

CABLE TELEVISION

Valley High School now has access to cable television. On Thursday November 12, 1981 Valley High School was hooked up to the Albuquerque Cable Company system.

What does this mean to Valley High School. It means that Valley is now part of a nationwide system of television, and is now at the front of the pack as far as educational technology is concerned. It also means that Valley High school faculty, and students can benefit from this new technology. Valley is the first Albuquerque High School to be hooked up to the cable system.

What does this service offer to students and staff. It offers live coverage of the House of Representatives, the live close-up series, which has students from around the country participating, in which Albuquerque Public Schools will be going to Washington D.C. this winter. This program can be seen live at Valley High School. News programs from Los Angeles, Atlanta, Chicago, and 24 hour news from Washington D.C. can be recorded to show differing views on the news from different sections of the country. The Spanish International Network can be used for our spanish language classes. A University of New Mexico channel showing course offerings, and registration information daily. City govt. channel showing live coverage of city council meetings. Valley will also produce video programs for use on the community access channel. Mr. Palmer has said he is working towards produceing a monthly video news magazine, sports shows, and in-service programs.

The cable control is in the media center, Mr. Palmer the Media Specialist at Valley is in charge of the cable system, and operates it from the production studio-cable control room. Mr. Palmer has also installed a cable into the lecture hall for large group veiwing.

Mr. Palmer would like to thank Mr. Baca and Mr. Cheeves for their support in this special contruction program, he would also like to thank Frank Kaplin, and Ed Townsen of Inst. T.V. for their help and work in putting the cable in the school site. Mr. Palmer would also like to invite parents to come by the Media Center and view the cable television in operation.

ALBUQUERQUE PUBLIC SCHOOLS,
Albuquerque, N. Mex., December 4, 1981.

To: Mr. Baca, Mr. Cheeves, Mr. Yannoni, Miss Piper.

I want to let you know about two projects I am involved with, in conjunction with our new cable television system. I am going to produce a monthly or bimonthly video news magazine program. I am also going to video tape several of our basketball games, with play-by-play, for showing over the community cable channel. I received permission from District Media Center, and Central Office, for the production of the programs. Mr. Frank Kaplin will help me, and the newspaper staff design the format for the news magazine, and I have done the sports productions before for Valley and other schools.

I wanted to let you know about this venture, before it takes place, so that you have a chance to ask me any questions that you may have. I believe that these two programs will help community public relation, and show that Valley High School innovative in the use of educational technology.

I appreciate your support this year, it makes my job much easier.

GREGORY PALMER,
Media Specialist.

P.S. I intend to call our venture VESN, (Valley Education and Sports Network)